Reversed

Filed

Jan. 5. 1881

5-441

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~150~~ 185

THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, APPELLANT,

vs.

GEORGE P. NELSON, ADMINISTRATOR OF WILLIAM COOK, DECEASED, JANE COOK, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

FILED SEPTEMBER 3, 1878.

Woods

Field

SUPREME COURT OF THE UNITED STATES.

No. 459.

THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, APPELLANT,

vs.

GEORGE P. NELSON, ADMINISTRATOR OF WILLIAM COOK, DECEASED, JANE COOK, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

INDEX.

	Original.	Print.
Petition in district court of Wyandotte County	1	1
Bonds for costs in district court of Wyandotte County	18	10
Summons in district court of Wyandotte County	19	10
Answer of Geo. P. Nelson in district court of Wyandotte County	20	11
Answer of Jane Cook in district court of Wyandotte County	21	12
Reply of Jane Cook in district court of Wyandotte County	25	14
Petition for removal from district court of Wyandotte County	26	15
Bond for removal from district court of Wyandotte County	27	16
Order removing case from district court of Wyandotte County to United States circuit court for the district of Kansas	29	17
Certificate of clerk of the district court of Wyandotte County	30	17
Journal entry, leave to file bill	32	18
Appearance of plaintiff	33	19
Bill	35	19
Exhibit No. 1 to bill	59	28
No. 2 to bill	62	30
Security for costs	71	33
Chancery subpœna	73	33
United States marshal's return	74	34
Answer of George P. Nelson, administrator, &c	77	35
Answer of Jane Cook	81	36
Answer of the city of Wyandotte, C. W. Twist, John Gibson, Joseph Davis, Lucretia Riley, and Philip Kaiser	87	38
Replication to answer of Geo. P. Nelson, administrator, &c	91	40
Replication to answer of Jane Cook	93	41
Replication to answer of The City of Wyandotte, C. W. Twist, John Gibson, Joseph Davis, Lucretia Riley, and Philip Kaiser	95	

1 In the circuit court of the United States for the district of Kansas.

THE NORTHWESTERN MUTUAL LIFE-INSURance Company, complainant,
vs.
GEORGE P. NELSON, AS ADMINISTRATOR OF the estate of William Cook, deceased, Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Nicholas McAlpine, Joseph Davis, The City of Wyandott, Wilson Shannon, and Nelson Cobb, defendants.

Be it remembered that on this day, to wit, June 4, 1877, the complainant, by its solicitors, filed in the clerk's office of said court its transcript from the district court of Wyandott County, which said transcript is in the words and figures following, to wit:

Petition.

STATE OF KANSAS,
County of Wyandott, ss:

In the district court in and for Wyandott County.

THE NORTHWESTERN MUTUAL LIFE-INSURance Company, plaintiff,
vs.
GEORGE P. NELSON, ADMINISTRATOR OF THE estate of William Cook, deceased, and Jane Cook. } Foreclosure petition.

And now comes the plaintiff, the Northwestern Mutual Life Insurance Company, and complains of the defendants, and avers for cause of action as follows:

1st. That plaintiff is a corporation duly organized and doing
2 business as such under the authority and power granted by the laws of the State of Wisconsin.

2nd. Plaintiff, for cause of action, further says that the defendant, George P. Nelson, is the administrator of the estate of William Cook, deceased, who departed this life on or about the day of , A. D. 1876. That on the 10th day of December, A. D. 1874, the said William Cook, in his lifetime, made, executed, and delivered, for a good and sufficient consideration, to the plaintiff his certain writing obligatory. Wherefore and by reason of said writing obligatory the said William Cook promised to pay to this plaintiff the sum of ten thousand dollars on the conditions therein named, which conditions were as follows, to wit:

1st. That the said William Cook, his heirs, executors, administrators, or any of them, should well and truly pay or cause to be paid to the Northwestern Mutual Life Insurance Company, this plaintiff, or to its attorneys, successors, or assigns, the just and full sum of five thousand dollars at the expiration of five years from the date thereof, with interest thereon until paid at the rate of 12 per cent. per annum, payable semi-annually on the first day of May and November in each and every

year. Both principal and interest payable at the office of the plaintiff in the city of Milwaukee, in the State of Wisconsin. And that he, the said William Cook, should moreover well and truly keep and perform the covenants and agreements pertaining to insurance, taxes, and assessments contained in a certain mortgage of even date with said writing obligatory executed by the said William Cook and Jane Cook, his wife, to this plaintiff.

It was further agreed and stipulated in said writing obligatory that in case of the non-payment of any sum of money, either of the said principal sum or interest thereon, or any insurance money, taxes, or assessments, at the time or times when they shall become due or payable agreeably to the terms or conditions of said writing obligatory,
3 or of said mortgage, then in such case the whole amount of such principal sum should at the option of this plaintiff, its successors or assigns, be deemed to have become due and payable, without any notice whatever, and that notice was by the terms of said writing obligatory expressly waived; and the same, and that all sums of money which might by paid by the plaintiff, its successors or assigns, for or on account of insurance, taxes, assessments, or prior liens, with interest thereon at the rate aforesaid, should thereupon be collected in a suit at law, or by a foreclosure of the said mortgage, in the same manner as if the whole of said principal sum had been made payable at the time when any such failure in any payment shall occur as aforesaid.

And it was a further condition of said obligatory, that if the said William Cook, his heirs, administrators, executors, shall pay the whole principal sum above mentioned, and the interest thereon, as above stated, and all sums, if any, which this plaintiff, its successors, should have payed for insurance, taxes, assessments, or prior liens, with interest thereon as aforesaid, according to the terms and conditions of said writing obligatory and said mortgage, without any fraud or other delay, then the said writing obligatory was to be void and of no effect, otherwise to be and remain in full force and virtue.

The said William Cook further agreed in said writing obligatory to pay said sums and to perform the conditions of said writing obligatory without any relief from any valuation or apprais'ment law, and therein expressly waived apprais'ment, and waived and released all the rights and benefits he had in said premises as a homestead under any act of the State of Kansas as relating to the alienation and exemption of homesteads, a copy of which writing obligatory is as follows, to wit:

Know all men by these presents that I, William Cook, of the city and county of Wyandott, and State of Kansas, am held and firmly
4 bound unto the Northwestern Mutual Life-Insurance Company in the sum of ten thousand ($10,000) dollars, lawful money of the United States of America, to be paid to the said Northwestern Mutual Life-Insurance Company, or to its certain attorneys, successors, or assigns, to which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, and each and every of them, firmly by these presents, sealed with my seal and dated the tenth day of December, in the year of our Lord one thousand eight hundred and seventy four.

The condition of this obligation is such that if the above bounden William Cook, his heirs, executors, administrators, or any of them shall well and truly pay or cause to be paid unto the above-mentioned the Northwestern Mutual Life-Insurance Company, or to its certain attorneys, successors, or assigns, the just and full sum of five thousan

($5,000) dollars at the expiration of five (5) years from the date of these presents, with interest thereon until paid at the rate of 12 per centum per annum, payable semi-annually on the first day of May and of November in each and every year, both principal and interest payable at the office of said company, in the city of Milwaukee, in the State of Wisconsin; and shall moreover well and truly keep and perform the covenants and agreements pertaining to insurance, taxes, and assessments contained in a certain mortgage of even date herewith, executed by the said William Cook and Jane Cook, his wife, to the said The Northwestern Mutual Life-Insurance Company. But in case of the non-payment of any sum of money, either of the said principal sum or interest thereon, or any insurance money, taxes, or assessments, at the time or times when the same shall become due or payable, agreeably to the terms and conditions of these presents or of the said mortgage, then, in such case, the whole amount of said prin-
5 cipal sum shall, at the option of the said The Northwestern Mutual Life Insurance Company, its successors or assigns, be deemed to have become due and payable without any notice whatever (notice of option being hereby expressly waived): and the same, together with all sums of money which may be paid by said The Northwestern Mutual Life Insurance Company, its successors or assigns, for or on account of insurance taxes, assessments or prior liens, with interest thereon at the rate aforesaid, shall thereupon be collectable in a suit at law, or by a foreclosure of the said mortgage, in the same manner as if the whole of the said principal sum had been made payable at the time when any such failure in any payment shall occur as aforesaid: Provided, however, that if the said William Cook, his heirs, executors or administrators, shall pay the whole principal sum above mentioned, and interest thereon, as aforesaid, and all sums, if any, which the said The Northwestern Mutual Life Insurance Company, its successors or assigns, shall have paid for insurance, taxes, assessments, or prior liens, with interest thereon, as aforesaid, according to the terms and conditions of these presents and if the said mortgage, without any fraud or other delay, then this obligation to be void and of no effect; otherwise to remain in full force and virtue.

The said William Cook hereby agrees to pay said sums and to perform the conditions of this bond without any relief from any valuation or apprais'ment laws, and hereby expressly waive' apprais'ment, and waives and release' all right and benefit they have in said premises as a homestead under any act relating to the alienation and exemption of homesteads.

No payment of the principal of this bond shall be deemed valid except upon the joint receipt of the president and secretary of said company.

WILLIAM COOK. [SEAL.]

Sealed and delivered in the presence of—

6 Plaintiff, for further cause of complaint in this behalf, avers that on the said 10th day of December, A. D. 1874, the said William Cook, in his lifetime, and the said defendant Jane Cook, his wife, for the purpose of fully securing the payment of the sums of money mentioned in said writing obligatory, and the interest accruing thereon, as the same became due and payable, and for the further purpose of securing to this plaintiff the performance of each and every of the conditions, undertakings, and agreements mentioned in said writing obligatory, and the mortgage heretofore referred to and hereinafter more particularly described and set out, made, executed, and delivered to this plaint-

KANSAS:

This indenture, made the tenth day of December, in the year of our Lord one thousand eight hundred and seventy-four, between William Cook and Jane Cook, his wife, in the city and county of Wyandott, parties of the first part, and the State of Kansas, and the Northwestern Mutual Life Insurance Company, party of the second part, witnesseth:

That *that* the said parties of the first part, for and in consideration of the sum of five thousand (5,000) dollars to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain and sell unto the said party of the second part, and to its successors and assigns forever, the following real estate lying and being in the county of Wyandott, and State of Kansas, and known and described as follows, viz:

Beginning at the southwest corner of the northwest quarter of section number fifteen (15), township number eleven (11) south, of range number twenty-five (25) east; thence east forty (40) poles; thence north two hundred and forty (240) poles to the center of the north line of the southwest quarter of the southwest quarter of section number ten (10), township and range aforesaid; thence west forty (40) poles to the northwest corner of the southwest quarter of the southwest quarter of said section number ten (10); thence south two hundred and forty (240) poles to the place of beginning, containing sixty acres. Also lots num-
11 ber seven (7), twelve (12), sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty-two (22), in block number one hundred and thirty-two, and lot number three (3) in block number one hundred and thirty-one (131), in the city of Wyandott, in the county and State aforesaid:

ether with the privileges and appurtenances to the same belonging, and all the rents, issues, and profits which may arise or be had therefrom; to have and to hold the same to the said party of the second part, its successors and assigns forever; and the said William Cook, for himself, his heirs, executors, administrators and assigns, covenants and agrees with the said party of the second part, its successors and assigns, to keep the building or buildings now standing, or which may hereafter be erected on the above described premises, insured against loss or damage by fire in solvent incorporation insurance company or companies, to be approved of by said party of the second part, its successors or assigns, as long as the moneys hereby secured shall be unpaid, to the amount of at least dollars, and to assign and keep assigned to said party of the second part, its successors and assigns, the policy or policies of such insurance, and deposit the same with the said party of the second part; and to pay annually to the proper officers all taxes and assessments which shall be levied or assessed on said real estate or any part thereof; and to procure and deliver to the said party of the second part, at its offices in the city of Milwaukee, in the State of Wisconsin, on or before the first day of May, in each and every year, duplicate receipts of the proper officers for the payment of all such taxes and assessments levied and assessed on said premises for the preceeding year; and in case of failure to keep and continue such insurance, or to assign the policy of policies thereof as above provided, or in case of the non-payment of any such taxes or assessments when the same shall become due and payable, the said party of the second part, its suc-
12 cessors or assigns, may effect an insurance upon said building or buildings to the amount above named, and may pay such taxes and assessments, with the accrued interest, officers' fees and expenses thereon; and the amounts or sums so paid for premiums and expenses

of insurance, and for taxes and assessments, and officers' fees and expenses on account thereof, shall be immediately paid to the said party of the second part, its successors or assigns, and shall, unless so paid, be added to and be deemed part and parcel of the moneys secured hereby, and from the time of the payment thereof by the said party of the second part, the sum so paid shall bear interest at the same rate of the principal debt hereby secured, and that the said parties of the first , at the time of the ensealing and delivery of these presents, are the true, lawful and rightful owners and proprietors of the said premises above described and every part thereof, and are seized of a good, sure, perfect and indefeasible estate of inheritance therein in fee simple; that they have good right, full power and lawful authority to grant, bargain, sell and convey the said premises and every part thereof to the said party of the second part, in manner and form aforesaid; that the said premises are free and clear from all taxes, liens and incumbrances whatsoever; and that the said parties of the first part will ever warrant and defend the same to the party of the second part, its successors and assigns, against all claims whatsoever: Provided, always, that these presents are upon this*e* express condition, that if William Cook, one of the said parties of the first part, his heirs, executors or administrators, shall pay or cause to be paid to the said party of the second part, its successors or assigns, the just and full sum of five thousand (5,000) dollars, at the expiration of five (5) years from the date of these presents, with interest thereon until paid at the rate of twelve per centum per
13 annum, payable semi-annually on the first day of May and of November of each and every year, both principal and interest payable at the office of said company in the city of Milwaukee, according to the conditions of a bond bearing even date herewith, executed by William Cook, one of the said parties of the first part, to the said party of the second part; and shall moreover keep such insurance as is above mentioned, and keep the policy or policies thereof assigned as aforesaid, and shall annually pay all taxes and assessments on said real estate, and procure and deliver the receipts therefor as aforesaid, then these presents and the said bond or writing obligatory shall cease and be null and void.

But in case of the non-payment of any sum of money (either of principal, interest, insurance money, taxes or assessments) at the time or times when the same shall become due, agreeable to the terms and conditions of these presents, or of the aforesaid bond, or any part thereof, then, in such case, the whole amount of said principal sum shall, at the option of the said party of the second part, its successors or assigns, be deemed to have become due and payable, without any notice whatever, (notice of such option being hereby expressly waived) and the same, together with all sums of money which may be paid by said party of the second part, its successors or assigns, for or on account of insurance, taxes, assessments, or prior liens, with interest thereon at the rate aforesaid, shall thereupon be collectable in a suit at law, or by foreclose of this mortgage, in the same manner as if the whole of said principal sum had been made payable at the time when any such failure in any payment shall occur as aforesaid, and the judgment or decree in the suit brought to foreclose the same shall embrace, with said principal debt and interest, all sums so paid for or on account
of insurance, taxes, assessments, or prior liens, with interest *with*
14 *interest* at the rate aforesaid; and it shall be lawful in such case for the said party of the second part, its successors or assigns, to grant, sell, and convey the said real estate, with the appurtenances thereunto

belonging, at public auction, or vendue, and on such sale to make and execute to the purchaser or purchasers, his, her, or their heirs and assigns, forever, good and sufficient deeds of conveyance in the law, pursuant to the statute in such case made and provided, and case suit shall be brought for the foreclosure of this mortgage, the said parties of the first part, for themselves, their heirs, representatives, and assigns, covenants and agree that they will pay to the said party of the second part, its successors or assigns, all expenses incurred in procuring and continuing abstracts of title for the purpose of the foreclosure suit, and will pay, in addition to the taxable costs in such suit, an adequate and reasonable sum as a solicitor's or attorney's fee, the amount thereof to be fixed by the court, and to be included with the expense for abstracts above mentioned in the judgment or decree.

The said parties of the first part hereby covenant and agree to perform the covenants and conditions of this mortgage, without any relief from any valuation or apprais'ment laws, and waive and release all rights and benefits they have in said premises as a homestead under any act relating the alienation and exemptions of homestead.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

WILLIAM COOK. [SEAL.]
JANE COOK. [SEAL.]

Signed, sealed, and delivered in the presence of 2 witnesses:
JOHN GIBSON.
ALISON CROCKETT.

STATE OF KANSAS,
Wyandott County, ss:

15 Be it remembered that on this 19th day of December, A. D. 1874, before the undersigned Alison Crockett, register of deeds in and for the county and State, duly commissioned and qualified, came William Cook and Jane Cook, his wife, who are personally known to me to be the same persons who executed the foregoing instrument of writing as grantors, and such persons duly and severally acknowledged the execution of the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year last written.

ALISON CROCKETT,
Register of Deed' Wyandott County, State of Kansas.

Plaintiff, for cause, further avers that said William departed this life intestate, on or about the day of , A. D. 1876, and that the defendant, Geo. P. Nelson, was by the probate court in and for Wyandott County and State of Kansas, duly appointed administrator of the estate of him the William Cook, deceased, on the day of , A. D. 1876, and issued letters testamentary to him, as such; that he, the said defendant Nelson, gave the required bond, and duly and regularly qualified himself as such administrator, with all power legally incident thereto.

That the said William Cook did not in his lifetime pay the interest to the plaintiff by the terms of said writing obligatory, on the 1st day of November, 1876; nor his the administrator or the heirs, or either of them, or any one for them, paid said interest, or any part thereof, but have wholly failed and refused to pay the same.

Plaintiff avers that the said William Cook in his lifetime did not pay,

nor cause to be paid, the taxes and assessments legally assessed upon and against said land, nor any part thereof, for the year 1875.

16 Nor has any person, or persons for him, or on his account paid, or caused the same to be paid, but allowed the same to become due and remain unpaid until long after the 1st day of May, 1876.

Plaintiff further avers that on the day of , A. D. 1876, it caused to be paid to the county treasurer of the county of Wyandott, the sum of dollars, in the aggregate, as and for the taxes legally levied and assessed against and upon pieces and parcels of land mentioned and described herein.

Plaintiff avers further that by reason of the said William Cook, in his lifetime, and the failure of the said administrator, since his appointment, to pay the said interest, as and when the same became due and was payable, and by reason further of the failure of him, William Cook, in his lifetime to pay the taxes and assessments legally levied and assessed against and upon said land, and each and every part thereof, when the same became due and payable, and furnish to this plaintiff duplicate receipts therefor, as agreed and covenanted in said mortgage, and of the failures of the said administrator to do the same the conditions of said writing obligatory, and the conditions of the said mortgage deed have each and all of them become forfeited, and that the agreements and covenants are, and of right ought to be, held of full force and effect.

Wherefore plaintiff avers that by reason of said forfeitures that the whole of said principal sum of money has become and is due, and that there is now due to this plaintiff from the said defendant G. P. Nelson, as the administrator of the estate of William Cook, deceased, the sum of ten thousand dollars as and for his reasonable damages for the non-compliance with and the failure to perform the conditions of the said writing obligatory.

17 Plaintiff also further avers that by reason of the failure aforesaid to pay said interest and taxes, and the forfeit necessarily following it, the plaintiff, to protect its own interest, and legally appropriate the property hereinbefore mortgaged, has been forced to employ solicitors and attorneys to prosecute this action and foreclose the mortgage aforesaid in a court of competent jurisdiction, and to pay the expenses thereof, and the costs of furnishing abstracts for such purpose, whereby it has been further damaged in the sum of six hundred dollars as for such fees for attorneys and solicitors, and such other expenses as are provided for in said writing obligatory and said mortgaged deed.

Wherefore plaintiff prays the court for a judgment against the said defendant, George P. Nelson, as administrator for the aforesaid sum of ten thousand dollars, and for the further sum of six hundred dollars for its costs and expenses in and about the prosecution of this suit as set out in this petition. That the court order and adjudge that the amount and sum of said judgment be declared to be a lien on the real estate herein described, and further that if the said judgment be not paid off and satisfied within a day to be named by the court, that the said real estate be sold by the sheriff of the proper county under such order and direction as the court is authorized to make, and for such other and further relief as in equity the court is authorized and empowered to give and make.

HENRY W. COOK,
J. S. GIBSON,
Attorneys for Plaintiff.

To G. W. BETTS, Esq., *Clerk*:

You will issue a summons against the defendants in the above entitled action to the sheriff of Wyandott County. Returnable according to law.

HENRY W. COOK,
Attorney for Plaintiff.

18 No. 2148. The Northwestern Mutual Life Insurance Company vs. Geo. P. Nelson, adm'r and Jane Cook. Filed February 2nd, 1877. G. M. Betts, clerk. Henry W. Cook, J. S. Gibson, attorneys for plaintiff.

Bond for costs.

In the tenth district court in and for the county of Wyandott and State of Kansas.

Know all men by these presents, that the Northwestern Mutual Life Insurance Company as principal, and as sureties, are held and firmly bound unto the State of Kansas in the sum of two hundred dollars, for the payment of which we do hereby bind ourselves, our heirs, executors and administrators, firmly by these presents.

The condition of the above obligation is such, that whereas the said Northwestern Mutual Life Insurance Company has commenced their certain civil action in the district court in and for the county of Wyandott, on the 2nd day of February, 1877, against George P. Nelson, administrator of the estate of William Cook, dec'd, & Jane Cook.

Now, if the said Northwestern Mutual Life Insurance Company shall well and truly pay all costs that may accrue in said action, in case it shall be adjudged to pay them, or in case the same cannot be collected from the said Geo. P. Nelson, adm'r, and Jane Cook, if judgment be obtained against them, and that the said Northwestern Mutual Life Insurance Company will *will* pay all costs made by it, then this obligation to be void, otherwise to be and remain in full force and effect.

THE NORTHWESTERN MUT. LIFE INS. CO.,
Per H. W. COOK, *Its Att'y.*
G. W. BISHOP.

19 THE STATE OF KANSAS,
County of Wyandott, ss:

Geo. W. Bishop, being first duly sworn, says that he is a resident of said State, and worth $400 over and above all his exemptions, debts and liabilities.

G. W. BISHOP.

Subscribed in my presence, and sworn to before me this 2 day of February, 1877.

[SEAL.] H. W. COOK,
Notary Public.

THE STATE OF KANSAS,
County of Wyandott, ss:

, being first duly sworn, says that he is a resident of said State, and worth $400 over and above all his exemptions, debts and liabilities.

Subscribed in my presence, and sworn to before me this day of Feb'y, A. D. 1877.

Clerk of the District Court.

(Endorsed:) No. 2148. The Northwestern Mutual Life Insurance Co., plaintiffs, vs. Geo. P. Nelson, adm'r, &c., and Jane Cook, defendants. Bond for costs presented, approved, and filed this 2nd day of February, 1877. G. W. Betts, clerk. Henry W. Cook and James S. Gibson, Att'ys for pl'ff.

Summons.

THE UNITED STATES OF AMERICA,
The State of Kansas, tenth judicial district, Wyandott County:

The State of Kansas to the sheriff of Wyandott County, in said State, greeting:

You are hereby commanded to notify George P. Nelson, administrator of the estate of William Cook, deceased, and Jane Cook, defendants, that they have been sued by the Northwestern Mutual Life Insurance Company, plaintiff, in the district court of the State of Kansas, sitting within and for the county of Wyandott, and that unless they answer by the 17th day of March, 1877, the petition of said plaintiff against them, filed in the clerk's office of the court aforesaid, the same will be taken as true, and judgment rendered accordingly.

You will make due return of this summons on the 25th day of February, 1877.

Witness my hand and the seal of said court, affixed at my office in the city of Wyandott, this 15th day of February, 1877.

[SEAL.] G. W. BETTS, *Clerk.*

(Endorsed:) No. 2148. District court, Wyandott County. Summons. Issued February 15th, 1877. Returnable 25th, 1877. The Northwestern Mutual Life Insurance Company vs. Geo. P. Nelson, adm'r, et al. H. W. Cook, plaintiff's attorney.

THE STATE OF KANSAS,
County of Wyandott, ss:

Received this summons on the 15th day of February, and served the same in my county by giving to and leaving a true copy thereof with G. P. Nelson, personally. Also by leaving a true copy at the usual place of residence of Jane Cook, on the 19th day of February, 1877.

W. H. RYUS, *Sheriff,*
By C. D. SHRADER, *Deputy.*

Fees: service, $ .75; copies, 50, non est; mileage, 20—total, $1.45.

Filed Feb'y 19th, 1877.

G. W. BETTS, *Clerk.*

Answer of Geo. P. Nelson.

10th dist. court, Wyandott County, Kansas.

THE NORTHWESTERN LIFE INSURANCE COMPANY
vs.
GEO. P. NELSON, ADMINISTRATOR OF THE estate of William Cook, deceased, & Jane Cook.

And now, at this time, comes Geo. P. Nelson, as administrator of the

estate of William Cook, deceased, one of the defendants herein, and for answer to the petition of the plaintiff herein filed admits that the said William Cook died on the day of , 187 . And that this defendant was, by the probate court of Wyandott County, on the day of , 187 , duly appointed such administrator. And denies each and every other allegation and averment therein contained, and asks the court to protect the rights of the said estate herein, and for his costs herein expended.

By W. J. BUCHAN,
His Att'y.

No. 2148, 10th dist. court, Wyandott County. The Northwestern Life Ins. Company vs. G. P. Nelson et al.

The filing of this answer out of time is hereby waived.
H. W. COOK AND JAS. S. GIBSON,
Att'ys for Pl'ff.

Answer of G. P. Nelson. Filed March 21, 1877.
G. W. BETTS,
Clerk.

Separate answer of Jane Cook, def't.

In the 10th district court, Wyandott County, Kansas.

THE NORTHWESTERN LIFE INSURANCE COMpany
vs.
GEORGE P. NELSON, ADMINISTRATOR OF THE estate of William Cook, deceased, and Jane Cook.

Answer of Jane Cook.

And now comes Jane Cook, one of the defendants herein, and for her separate answer to the petition of the plaintiff in this cause filed, and says:

That she denies each and every allegation and averment in said petition contained, except such as are hereinafter expressly admitted.

22 And for a further answer to said petition defendant admits that she is the widow of William Cook above mentioned; that her said husband, William Cook, died on the day of , A. D. 187 , and that the said defendant, George P. Nelson, was, on the day of , A. D. 187 , duly appointed by the probate court of Wyandott County, Kansas, administrator of his estate.

And defendant avers and alleges that she is the owner in her own right, as her individual and separate estate, of the following real estate described in the mortgage set out in the plaintiff's petition, and upon which plaintiff seeks a foreclosure in this action, viz:

Beginning at the southwest corner of the northwest quarter of section number fifteen (15), township number eleven (11) south of range number twenty-five (25) east; thence east forty (40) poles; thence north two hundred and forty (240) poles to the center of the north line of the southwest quarter of the southwest quarter of section number ten (10), township and range aforesaid; thence west forty (40) poles to the northwest corner of the southwest quarter of the southwest quarter of said section number ten (10); thence south two hundred and forty (240) poles

to the place of beginning, containing sixty (60) acres. That this defendant was such owner long before her marriage to her late husband, William Cook, aforesaid, and also was such owner at the time of the execution of this mortgage.

Defendant further alleges and avers that on or about the 1st day of December, 1874, before the time of the execution of the bond and mortgage sued upon in this cause, her said husband was anxious of borrowing an amount of money unknown to this defendant for his own private use and benefit, and that he asked this defendant to sign a mortgage upon some lots in the city of Wyandott, which defendant refused to do.

That afterward, on or about the 10th day of December, 1874,
23 her said husband came to the room of defendant, where defendant was confined sick, and in feeble health of body and mind and *and* greatly troubled and depressed, and presented the mortgage set forth in plaintiff's petition, and sued upon in this action, which he told defendant was a mortgage on certain lots in Wyandott City, and commanded this defendant to sign the same, which defendant again refused to do. When her said husband then *signed* def't, and by main force and coercion holding this defendant's hands, wrote her signature thereto, telling this defendant that her said land above described was not contained in said mortgage; that no harm could come to her separate property; that the (def't) need not be so stubborn. That this def't especially asked her said husband if her land above described was included in said mortgage, and was told it was not.

That afterwards, when the officer who certified to the signing of said mortgage came into def't's room, defendant was given to understand by his conversation with her said husband that said mortgage included certain lots in Wyandott City and no more. And that def't, fully relying upon the repeated statements and representations of her said husband and said officers, believed and became convinced that her said land above described was not included in said mortgage. And defendant avers that she never signed said mortgage, knowing or believing the same to be a mortgage of her said land; that her said husband refused to read or permit this defendant to read said mortgage, and that the officer aforesaid did not read or explain the contents thereof to this defendant, except as above mentioned; that this defendant received no part of the consideration in said mortgage mentioned nor any benefits therefrom.

24 And defendant avers and alleges that she did not sign or execute said mortgage deed of her own free will and accord, but that she was compelled to sign said mortgage by force and threats of her said husband, and that the same was signed under duress, by actual force, physical coercion, and the use of violence and compulsion of her said husband, and through and by such threats, force, and physical coercion, and not otherwise, she was made to sign said mortgage, and that def't was prevented by threats and menances of her said husband from telling the officer who acknowledged said mortgage that she did not execute the same of her own free will and accord, and was prevented from speaking at all to said officer by her said husband.

And defendant avers and alleges that said mortgage is not her deed and is null and void as against this defendant.

Wherefore, this defendant prays the court for a judgment decreeing that said mortgage be cancelled and held void as to this defendant, and that the plaintiff be directed to erase this defendant's name from said instrument, and that she be restored to her property and to all her rights in the premises, and for such other and further order, judgment,

and decree as in equity may be right and just, and for her costs herein expended.

W. J. BUCHAN AND
N. CREE,
Def't's Atty's.

STATE OF KANSAS,
County of Wyandott, ss:

Jane Cook, being duly sworn, says that she has read the foregoing answer and knows the contents thereof, and that the statements therein contained are true.

JANE COOK.

Subscribed in my presence and sworn to before me this 21st day of March, 1877.

F. B. ANDERSON,
Notary Public.

25 No. 2148, 10th dist. court, Wyandott County, K's. The Northwestern Life Ins. Co. vs. G. P. Nelson et al. Separate answer of Jane Cook.

The filing of this answer out of time is hereby waived.

H. W. COOK AND JA'S S. GIBSON,
Att'ys for Pl'ff.

Filed March 21st, 1877.

G. W. BETTS,
Clerk.

Reply.

STATE OF KANSAS,
Wyandott County, ss:

In the district court in the county of Wyandott, in the State of Kansas.

THE NORTHWESTERN MUTUAL LIFE INSURANCE Company
vs.
GEORGE P. NELSON, ADMINISTRATOR OF THE estate of William Cook, deceased, and Jane Cook.

And now comes the above-named plaintiff and for reply to the answer in this the above-entitled action of the above-named defendant, Jane Cook, said plaintiff denies all, each, and every allegation and averment in said answer made or contained.

JA'S S. GIBSON AND CLOUGH AND WHEAT,
Attorneys for Plaintiff.

No. 2148. The Northwestern Mutual Life Insurance Company vs. George Nelson, adm'r, &c., and Jane Cook. Reply to answer of Jane Cook. Filed M'ch 31st, 1877. G. W. Betts, clerk. J. S. Gibson and Clough and Wheat, att'ys for pl'ff.

26 *Petition for removal.*

STATE OF KANSAS,
Wyandott County, ss:

In the district court in the county of Wyandott, in the State of Kansas.

THE NORTHWESTERN MUTUAL LIFE INSURance Company, plaintiff,
vs.
GEORGE P. NELSON, ADMINISTRATOR OF THE estate of William Cook, deceased, and Jane Cook, defendants.

And now comes the Northwestern Mutual Life Insurance Company, the plaintiff in the above-entitled suit, and avers that it commenced the said suit in the above-named-district court in the county of Wyandott, in the State of Kansas, wherein said suit is now pending against George Nelson, administrator of the estate of William Cook, deceased, and Jane Cook, the defendants therein, and this is before the first term of said district court at which said suit could be tried.

And said plaintiff further avers that the matter in dispute in said suit exceeds, exclusive of costs, the sum of five hundred dollars.

And the said plaintiff further avers that it is a corporation organized under and by virtue of and existing in pursuance of the laws of the State of Wisconsin, and was a citizen thereof when said suit was commenced, and ever since then has been a citizen of said State of Wisconsin, and that there is in said suit a controversy between said plaintiff and the above-named defendants George Nelson, administrator of the estate of William Cook, deceased, and Jane Cook, and that defendants are not citizens of the State of Wisconsin, and are citizens of the State of Kansas, and there is in said suit a controversy between
27 citizens of different States, that is, between this plaintiff and said defendants, which said controversy is wholly between citizens of different States, and can be fully determined as between them, and there is no controversy in said suit between any person or parties other than between said plaintiff and said defendants.

And this plaintiff hereby petitions for the removal of said suit into the circuit court of the United States to be held in the district of Kansas, and said plaintiff herewith tenders its bond as required by the act of Congress in such case.

CLOUGH & WHEAT,
Attorneys for Plaintiff.

No. 2148. The Northwestern Mutual Life Insurance Company vs. George Nelson, adm'r, &c., & Jane Cook. Petition for removal, &c., Filed M'c'h 31st, 1877. G. W. Betts, clerk. Clough & Wheat.

Bond for removal.

STATE OF KANSAS,
Wyandott County, ss :

In the district court in the county of Wyandott, in the State of Kansas.

THE NORTHWESTERN MUTUAL LIFE INSURance Company, plaintiff,
vs.
GEORGE NELSON, ADMINISTRATOR OF THE estate of William Cook, deceased, & Jane Cook, defendants.

Know all men by these presents that we, the undersigned, the Northwestern Mutual Life Insurance Company, as principal, and Wm. Booth, Noble J. Waterman, and George A. Eddy, as sureties, are held and firmly bound unto George Nelson, administrator of the estate of
28 William Cook, deceased, and Jane Cook, the defendants in the above-entitled suit, in the sum of five hundred dollars lawful money of the United States to be paid to the said defendants, for the payment whereof well and truly to be made we hereby jointly and severally bind ourselves, our heirs, executors, and administrators firmly by these presents, dated this second day of April, A. D. 1877.

The conditions of the above obligation is such that whereas the Northwestern Mutual Life Insurance Company aforesaid, the plaintiff in this the above-entitled action, has heretofore commenced the said suit in the above-named district court, in the county of Wyandott, in the State of Kansas, wherein it is now pending, and the matter in dispute in said suit exceeds, exclusive of costs, the sum of five hundred dollars.

And whereas the above named plaintiff has filed its petition in said district court for the removal of said suit into the circuit court of the United States for the district of Kansas, in which district said suit is pending:

Now, if the said plaintiff shall and does enter in said circuit court on the first day of its next session a copy of the record in said suit, and pay all costs that may be awarded by said circuit court if said circuit court shall hold that said suit was wrongfully or improperly removed thereto, and shall also then appear in said circuit court in said suit, and enter special bail therein, if special bail were originally requisite therein, then the above obligation to be void, otherwise to be and remain in full force and effect.

In witness whereof the undersigned now signs the bond.

THE NORTHWESTERN LIFE INSURANCE COMPANY,
By its agent WM. BOOTH.
WM. BOOTH.
NOBLE J. WATERMAN.
GEO. A. EDDY.

29 No. 2148. The Northwestern Mutual Life Insurance Company vs. George P. Nelson, adm'r, &c., & Jane Cook. Bond for removal. Filed M'ch 31st, 1877. G. W. Betts, clerk.

Order for removal.

THE STATE OF KANSAS,
Tenth Judicial District, Wyandott County, ss:

At a session of the district court sitting within and for said county of Wyandott, begun and held at the court-house, in the city of Wyandott, in said county, on the 2nd day of April, A. D. 1877, as by statute required, there being present Hon. Hiram Stevens, judge of said judicial district, and W. H. Ryus, sheriff, and G. W. Betts, clerk of the district court of said county, the following proceedings among others are had:

MONDAY, *April 2nd, A. D.* 1877.

THE NORTHWESTERN MUTUAL LIFE INSURance Company
vs.
GEORGE P. NELSON, ADMINISTRATOR OF THE estate of William Cook, deceased, and Jane Cook. } No. 2148.

Now on this day comes the plaintiff herein by Clough and Wheat and J. S. Gibson, its attorneys, and also come George Nelson, administrator of the estate of William Cook, deceased, and Jane Cook, the defendants herein, by W. J. Buchan and N. Cree, their attorneys, and thereupon said plaintiff, The Northwestern Mutual Life Insurance Company, files herein and presents to the court its petition for a removal of this action into the circuit court of the United States to be held in the district of Kansas, and also files and presents to the court its bond for such removal, in the sum of five hundred dollars ($500), with William Booth, Noble J. Waterman, and Geo. A. Eddy as sureties and conditioned as required by law.

And it appearing to the court that the matter in dispute herein exceeds the sum of five hundred dollars ($500) *dollars* exclusive of costs, and that the said plaintiff, The Northwestern Mutual Life Insurance Company, is entitled to a removal of this action to said circuit court of the United States for trial, it is now by the court here considered and ordered that the said bond and the sureties thereto be and the same are by the court here accepted and approved, and that this cause be and the same is now hereby removed into the circuit court of the United States next to be holden in the district of Kansas, and that the clerk of this district court certify the same to said circuit court as required by law in such cases.

Certificate.

STATE OF KANSAS,
Wyandott County, ss:

I, G. W. Betts, clerk of the district court in and for the county and State aforesaid, do hereby certify that the within, above, and foregoing is a full, true, and correct copy of the petition of said plaintiff, the answers of said defendants therein, the reply plaintiff to said answers, summons, bond for costs, petition, and bond of plaintiff for the removal of said suit to the circuit court of the United States for the district of Kansas, together with the order of the district court in which said suit was pending for its removal to the circuit court of the United States, dist. of

Kansas, as aforesaid, as the same appear of the record and the files
31 of said case now in my office; the title of said cause being as follows: The Northwestern Mutual Life Insurance Company against George P. Nelson, administrator of the estate of William Cook, deceased, and Jane Cook.

Witness whereof I have hereunto set my hand and the seal of said court, affixed at my office in the city of Wyandott and county aforesaid, on this 26th day of April, 1877.

[SEAL.] G. W. BETTS,
Clerk of Dist. Court.

Fees on transcript, $7.50; fees on case dist. court, 5.50; postage, 20—$13.20.

STATE OF KANSAS,
County of Wyandott, ss:

I, the undersigned, G. W. Betts, clerk of the district court, in the county of Wyandott, in the State of Kansas, hereby certify that the above and foregoing is a copy of the record in the therein entitled suit of the Northwestern Mutual Life Insurance Company against George P. Nelson, administrator of the estate of William Cook, deceased, and Jane Cook, as the same appears on file and of record in my office as such clerk.

In witness whereof I hereto set my hand and affix the seal of said court, at my office in Wyandott, in the county and State aforesaid, this third day of May, A. D. 1877.

[SEAL.] G. W. BETTS,
Clerk of the Dist. Court.

(Endorsed:) No. 1928. The Northwestern Mutual Life Insurance Company against George P. Nelson, administrator of the estate of William Cook, deceased, and Jane Cook. Transcript from dist. ct. Wyandott Co. Filed June 4, 1877. A. S. Thomas, clerk.

32 And on this day, to wit, Monday, June 4th, 1877, in the June term, 1877, of said court, in the record of the proceedings thereof in said entitled suit is the following entry, to wit:

Journal entry.

THE NORTHWESTERN MUTUAL LIFE INSURance Company, plaintiff,
vs.
GEORGE P. NELSON, ADMINISTRATOR OF THE estate of William Cook, deceased, and Jane Cook, defendants. } 1928.

And now this day comes the plaintiff herein, by Clough & Wheat, its counsel, and on its application it is now by the court here ordered that John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Nicholas McAlpine, Joseph Davis, The City of Wyandotte, Wilson Shannon, and Nelson Cobb, be, and they are now made parties defendant herein, and with leave of court now here given, it, said plaintiff, now files a bill of complaint herein against the above named George P. Nelson, as administrator of the estate of William Cook, deceased, Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Nicholas Mc-

Alpine, Joseph Davis, The City of Wyandotte, Wilson Shannon, and Nelson Cobb, and it is further ordered that said George P. Nelson, as administrator of the estate of William Cook, deceased, and also defendant Jane Cook, answer said bill on or before Monday, the second day of July, A. D. 1877.

C. G. FOSTER, *Judge.*

33, 34 And on this day, to wit, June 4th, 1877, the complainant, by its solicitors, filed in the clerk's office of said court its appearance in said entitled suit, which said appearance is in the words and figures following, to wit:

Appearance of plaintiff.

UNITED STATES OF AMERICA,
District of Kansas, ss:

In the circuit court of the United States for the district of Kansas.

THE NORTHWESTERN MUTUAL LIFE INSURance Company, plaintiff,
vs.
GEORGE P. NELSON, ADMINISTRATOR OF THE estate of William Cook, deceased, and Jane Cook, defendants.

And now comes the above named plaintiff and enters its appearance in this the above-entitled action in the above-named circuit court this fourth day of June, A. D. 1877.

CLOUGH & WHEAT,
Attorneys and Counsel for Plaintiff.

(Endorsed:) No. 1928. The Northwestern Mutual Life Insurance Company vs. George P. Nelson, adm'r, &c., and Jane Cook, plaintiff. Appearance. Filed June 4th, 1877. A. S. Thomas, clerk.

35 And on this day, to wit, June 4th, 1877, the plaintiff, by its solicitors, filed in the clerk's office of said court its bill in said entitled suit, which said bill is in the words and figures following, to wit:

Bill.

UNITED STATES OF AMERICA,
District of Kansas, ss:

In the circuit court of the United States for the district of Kansas. In equity.

To the judges of the circuit court of the United States for the district of Kansas:

The Northwestern Mutual Life Insurance Company of the city of Milwaukee, in the county of Milwaukee and State of Wisconsin, an existing corporation duly organized in and under the laws of said State of Wisconsin, and a citizen of the State of Wisconsin, brings this its bill against George P. Nelson as administrator of the estate of Wil-
36 liam Cook, deceased, of the city of Wyandotte, in the county of

Wyandotte and State of Kansas, and who is a citizen of the State of Kansas, and Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, and Nicholas McAlpine, of the city of Wyandotte, in the county of Wyandotte and State of Kansas, and who are citizens of the State of Kansas, and Joseph Davis, of the county of Wyandotte and State of Kansas, and who is a citizen of the State of Kansas, and The City of Wyandotte, of said county and State, and which city of Wyandotte is a citizen and a municipal corporation of said State of Kansas, and Wilson Shannon, of the city of Lawrence, in the county of Douglas and State of Kansas, and who is a citizen of the State of Kansas, and Nelson Cobb, of the city of Kansas, in the county of Jackson and State of Missouri, and who is a citizen of the State of Missouri, and who can be served with process of subpœna in this case in the State and district of Kansas.

And thereupon your orator, the Northwestern Mutual Life Insurance Company aforesaid, the plaintiff herein, complains and says that one William Cook, since deceased, heretofore, to wit, on the tenth day of December, A. D. 1874, and in his lifetime, made, executed, and delivered to your orator his certain bond, his writing obligatory of that date, and thereby and therein said William Cook stated and acknowledged himself to be thereby held and firmly bound unto your orator in the sum of
37 ten thousand dollars, lawful money of the United States of America, to be paid to your orator or to its certain attorneys, successors, or assigns, to which payment well and truly to be made said William Cook bound himself, his heirs, executors, and administrators, and each and every of them firmly by these presents, the said written instrument, which said writing obligatory was and is subject to certain conditions thereunder written whereby it was and is among other things provided that if said William Cook, his heirs, executors, administrators, or any of them, should well and truly pay or cause to be paid unto your orator or to its certain attorneys, successors, or assigns, the just and full sum of five thousand dollars at the expiration of five years from the date thereof, the tenth day of December, A. D. 1874, with interest thereon until paid at the rate of twelve per cent. per annum, payable semi-annually on the first day of May and of November in each and every year, both principal and interest payable at the office of your orator in the city of Milwaukee, in the State of Wisconsin, and should moreover well and truly keep and perform the covenants and agreements pertaining to insurance, taxes, and assessments contained in that certain mortgage of even date therewith executed by said William Cook and Jane Cook to your orator as is hereinafter more particularly
38 stated. But that in case of the non-payment of any sum of money either of said principal sum or interest thereon, or any insurance money, taxes or assessments, at the time or times when the same should become due or payable agreeably to the terms and conditions of those presents or of said mortgage, that then and in such case the whole amount of said principal sum should, at the option of your orator, its successors or assigns, be deemed to have become due and payable without any notice whatever, and the same, together with all sums of money which might have been or be paid by your orator, its successors or assigns, for or on account of insurance, taxes, assessments or prior liens, with interest thereon at the rate aforesaid, should thereupon be collectable in a suit at law, or by a foreclosure of the said mortgage, in the same manner as if the whole of the said principal sum had been made payable at the time when any such failure in any payment should occur as aforesaid and notice of such option as aforesaid was by the said Will-

iam Cook expressly waived in and by said bond; but, and it was in and by said writing obligatory further provided that if the said William Cook, his heirs, executors, administrators, should pay the whole principal sum above mentioned and interest thereon as aforesaid, and all sums, if any, which your orator, its successors or assigns, should have paid for insurance, taxes, assessments or prior liens,
39 with interest thereon as aforesaid, then said writing obligatory to be void and of no effect, otherwise to remain in full force and virtue.

And said William Cook further in and by said writing obligatory agreed to and with your orator to pay said sums and to perform the conditions of said writing obligatory without any relief from any valuation or appra'sement laws, andtherein and thereby expressly waived appraisement and waived and released all rights and benefits he had in any of the preises in this bill mentioned as a homestead under any act relating to the alienation and exemption of homesteads as in and by said bond reference being thereunto had when produced will more fully and at large appear. A copy of which said bond is herewith filed hereto attached marked Exhibit No. 1 and made part hereof.

And your orator further avers that heretofore and on the aforesaid tenth day of December, A. D. 1874, the said William Cook, and Jane Cook, in the lifetime of the said William Cook, for the purpose and in order to secure the payment of the aforesaid bond and of the sums of money and interest therein specified and performance thereof, and of the conditions and requirements thereof, they, the said William Cook and Jane Cook, made, executed, and delivered to your orator their certain mortgage of that date, and thereby they, the said Wil-
40 liam Cook and Jane Cook mortgaged, granted, bargained, and sold unto your orator and to its successors and assigns forever the following described tracts of land, situate, lying, and being in the county of Wyandotte and State of Kansas, namely, that certain tract of land which is bounded as follows:

Beginning at the southwest corner of the northwest quarter of section number fifteen (15) in township number eleven (11) south of the base line, of range number twenty-five (25) east of the sixth principal meridian; running thence east forty (40) poles; running thence north two hundred and forty (240) poles to the center of the north line of the southwest quarter of section number ten (10) in the township and range aforesaid; running thence west forty (40) poles to the northwest corner of the southwest quarter of the southwest quarter of said section number ten (10); running thence south two hundred and forty (240) poles to the place of beginning, containing sixty (60) acres; and also lots numbered seven (7), twelve (12), sixteen (16), seventeen (17), eighteen (18), nineteen (19), and twenty-two (22) in block number one hundred and thirty two (132) in the city of Wyandotte, and lot number three (3) in block number one hundred and thirty-one (131) in the city of Wyandotte; all in the county of Wyandotte and State of Kansas.

Together with the privileges and appurtenances to the same belonging, and all of the rents, issues and profits which might arise or be
41 had therefrom; to have and to hold the same to your orator, its successors and assigns forever.

And the said William Cook, for himself, his heirs, executors, administrators and assigns, did in and by said mortgage among other things covenant and agree to and with your orator, its successors and assigns, to pay annually to the proper officers all taxes and assessments which should be levied or assessed on the real estate the tracts of land above described

or any part thereof and to procure and deliver to your orator at its office in the city of Milwaukee, in the State of Wisconsin, on or before the first day of May, in each and every year, duplicate receipts of the proper officers for the payment of all such taxes and assessments levied or assessed on said premises the tracts of land aforesaid for the preceding year, and that in case of the non-payment of any such taxes or assessments when the same should become due and payable, your orator, its successors or assigns, might pay such taxes and assessments with accrued interest, officers' fees and expenses thereon, and that the amounts, the sums so paid for taxes or assessments and officers' fees and expenses on account thereof, should be immediately paid to your orator, its successors or assigns, and should unless so paid be added to and be deemed part and parcel of the moneys secured by said mortgage, and that from the time of the payment thereof by your orator the sums so paid
42 should bear interest at the same rate as the principal debt secured by said mortgage; which said mortgage was and is subject to certain conditions thereunder written, whereby it was and is among other things provided, that if said William Cook, his heirs, executors or administrators should pay or cause to be paid to your, orator, its successors or assigns, the just and full sum of five thousand dollars at the expiration of five years from the date of said mortgage, with interest thereon until paid at the rate of twelve (12) per cent per annum payable semi-annually on the first day of May and of November of each and every year, both principal and interest payable at the office of your orator in said city of Milwaukee, according to the condition of the abovementioned bond, and should annually pay all taxes and assessments on the real estate the tracts of land aforesaid and procure and deliver the receipts therefor as aforesaid, then said mortgage and said bond should cease and be null and void. But that in case of the non-payment of any sum of money, either of principal, interest, taxes, or assessments at the time or times the same shall become due, agreeably to the terms and conditions of said mortgage or of said bond, or any part thereof, then, in such case, the whole amount of said principal sum, said five thousand dollars, should, at the option of your orator, its successors or assigns, be deemed to have become due and payable without any notice
43 whatever, and that the same, together with all sums of money which should have been paid by your orator, its successors or assigns, for or on account of taxes, assessments, or prior liens, with interest thereon at the rate aforesaid, should thereupon be collectable in a suit at law, or by foreclosure of that mortgage in the same manner as if the whole of said principal sum had been made payable at the time when any such failure in any payment should occur, as aforesaid, and that the judgment or decree in the suit brought to foreclose the same should embrace with said principal debt and interest all sums so paid for or on account of taxes, assessments, or prior liens, with interest at the rate aforesaid, and that it should be lawful in such case for your orator, its successors or assigns, to grant, sell, and convey the said real estate, the tracts of land aforesaid, with the appurtenances thereunto belonging, at public aution or vendue, and on such sale to make and execute to the purchaser or purchasers thereof, his, her, or their heirs and assigns, forever, good and sufficient deeds of conveyance in the law, pursuant to the statute in such case made and provided; and said William Cook and Jane Cook in and by said mortgage expressly waived notice of any such option as aforesaid.

And said William Cook and Jane Cook, also in and by said mortgage for themselves, their heirs, representatives, and assigns, covenanted and

agreed to and with your orator that they would pay to your orator,
44 its successors or assigns, all expenses incurred in procuring and continuing abstracts of title for the purposes of such foreclosure suit, and that they would pay, in addition to taxable costs in such suit, an adequate and reasonable sum as a solicitor's or attorney fee, the amount thereof to be fixed by the court, and that the same should be included with the expenses for the abstracts above mentioned in such judgment or decree as should be rendered in such suit.

And they, the said William Cook and Jane Cook, in and by said mortgage, further covenanted and agreed to and with your orator, to perform the covenants and conditions of said mortgage without any relief from any valuation or appraisement laws, and expressly waived appraisement and waived and released all rights and benefits they had in said premises as a homestead under any act relating to the alienation and exemption of homesteads.

And your orator further avers that words of similar import to the word' "appraisement waived" are and were in said mortgage when the same was made and executed as aforesaid, as in and by said mortgage, reference being thereto had when produced, will more fully and at large appear.

And your orator further avers that it has incurred a large amount
45 of expense in procuring and continuing abstracts of title to the aforesaid tracts of land, for the purposes of this foreclosure suit, and that six hundred dollars will be an adequate and reasonable sum as a solicitor's or attorney's fee, of and for your orator in this suit for the purposes thereof.

And your orator further avers that afterwards, and on the 19th day of December, A. D. 1874, said William Cook and Jane Cook, at said county of Wyandotte, to and before one Alison Crockett, then register of deeds in and for said county of Wyandotte, in the State of Kansas, duly acknowledged the execution of said mortgage, and said Alison Crockett, as such register of deeds, then and there wrote, made, and endorsed on said mortgage a good and sufficient certificate of such acknowledgment thereof, a copy of which said mortgage and certificate of acknowledgment is herewith filed, hereto attached, marked Exhibit No. 2, and made part hereof.

And that on the 29th day of December, A. D. 1874, at ten and a half o'clock a. m. of that day, said mortgage and certificate were duly left, deposited, and filed for record with and in the office of the register of deeds in and for said county of Wyandotte, and that the same were then and there duly recorded on pages 353, 354, 355, and 356 of book W, of the records of said office.

And your orator further avers that afterwards, to wit, on the fourth day of September, A. D. 1876, said William Cook died intestate,
46 leaving no child nor any descendant surviving him, but and he left said Jane Cook, to whom he had before then been married, his wife, now his widow, his sole heir surviving him, and since then and heretofore, to wit, on the 22nd day of September, A. D. 1876, said George P. Nelson was, in and by the probate court in and for the said county of Wyandotte, duly appointed administrator of all and singular the goods and chattles, rights and credits, which were of the said William Cook at the time of his death, and said Nelson has duly qualified and given bond as such administrator, and is administrator of the estate of said William Cook, deceased.

And your orator further avers that said John Gibson claims an interest in the aforesaid lot number sixteen, of what kind or nature your

orator does not know further than that he, the said John Gibson, claims to have leased the same from said William Cook in his lifetime, and since the aforesaid mortgage was filed for record and recorded as aforesaid, and to be now, as tenant of said Jane Cook and of said Nelson, as such administrator, in possession of said lot number sixteen.

And that said Philip Kaiser claims an interest in the aforesaid lot number seventeen, of what kind or nature your orator does not know further than that he, said Philip Kaiser, claims to have leased and rented the same from said William Cook in his lifetime, and since the
47 aforesaid mortgage was filed for record and recorded as aforesaid, and to be now, as tenant of said Jane Cook and of said Nelson, as such administrator, in possession of said lot number seventeen.

And the said Lucretia Riley claims an interest in the aforesaid lot number eighteen (18), of what kind or nature your orator does not know further than that she, said Lucretia Riley, claims to have leased and rented the same from said William Cook in his lifetime, and since the aforesaid mortgage was filed for record and recorded as aforesaid, and to be now, as tenant of said Jane Cook and of said Nelson, as such administrator, in possession of said lot number eighteen.

And that said Charles W. Twist claims an interest in the aforesaid lot number nineteen, of what kind or nature your orator does not know further than that he, said Charles W. Twist, claims to have leased and rented the same from said William Cook in his lifetime, and since the aforesaid mortgage was filed for record and recorded as aforesaid, and to be now, as tenant of said Jane Cook and of said Nelson, as such administrator, in possession of said lot number nineteen.

And that said Joseph Davis claims an interest in the tract of land first above described, of what kind or nature your orator does not know further than that the said Joseph Davis claims to have leased and
48 rented the same from said Jane Cook since the aforesaid mortgage was filed for record and recorded as aforesaid, and to be now, as tenant of said Jane Cook, in possession of said first above mentioned tract of land.

And that said Wilson Shannon and Nelson Cobb claim they have acquired a lien on and an interest in the aforesaid tracts of land from said William Cook since said mortgage was filed for record and recorded as aforesaid, of what kind or nature your orator does not know further than that said Shannon & Cobb claim to have recovered a money judgment in the district court in said county of Wyandotte in A. D. 1876, against said William Cook and others, and that the city of Wyandotte aforesaid and said Nicholas McAlpine claim that they have acquired a lien on and an interest in the aforsaid tracts of land from said William Cook since the aforesaid mortgage was filed for record and recorded as aforesaid, of what kind or nature your orator does not know further than that said Nicholas McAlpine claims that said Shannon and Cobb have assigned to him such a judgment, and the city of Wyandotte aforesaid and said Nicholas McAlpine claim to have recovered a money judgment in the district court of said county of Wyandotte in December, A. D. 1876, against said William Cook.

Your orator says that if there ever was in form or language any such pretended judgment pretended to be rendered, the same is void,
49 among other reasons, because said William Cook was dead long before any such pretended judgment was or could have been rendered.

And your orator further avers that all such interests, liens, and claims as the aforesaid John Gibson, Philip Kaiser, Lucretia Riley, Charles W.

Twist, Nicholas McAlpine, Joseph Davis, Wilson Shannon, Nelson Cobb, the City of Wyandotte, and George P. Nelson, or any or either of them, have or claim of, on, in, to, or against the aforesaid tracts of land, or any or either of them, was acquired from said William Cook and Jane Cook, or from one of them, long after the aforesaid mortgage was made, executed, and recorded as aforesaid, and with full notice and knowledge thereof.

And your orator further avers that divers large amounts of taxes have been duly levied and assessed on and against the aforesaid tracts of land, and each of them, each year during the last six years and longer, and that divers assessments were also during the same time, and in A. D. 1874, levied and assessed on and against the aforesaid lots in the city of Wyandotte aforesaid, and each of them, and that said William Cook and Jane Cook have not, nor has either of them, nor has said George P. Nelson, administrator as aforesaid, nor has any person or persons other than your orator, ever paid any of said assessments, nor any such of the taxes aforesaid as were levied or assessed in, during, or since the commencement of the year A. D. 1874.

50 And your orator further avers that heretofore, to wit, on the 23rd day of September, A. D. 1875, the aforesaid lots in the aforesaid block number one hundred and thirty-two were duly sold by the county treasurer of said county of Wyandotte for and because of the non-payment of certain taxes and assessments duly levied and assessed thereon in A. D. 1874, all which taxes and assessments became and were due long before September, A. D. 1875, and certain other taxes and assessments were duly levied and assessed thereon, that is, on said lots in said block one hundred and thirty-two (132), during A. D. 1875, which became and was all due before the 13th day of November, A. D. 1876, and on that last-named day your orator duly redeemed said lots in said block number one hundred and thirty-two (132) from the aforesaid sales, so made in September, A. D. 1875, as aforesaid, at a necessary cost and expense of $948.72, that being the then amount of taxes, interest, and charges thereon required and necessary to be paid to redeem the same, and your orator then paid that sum to the county treasurer of said county of Wyandotte to redeem said lots from said tax-sale thereof; nine hundred and forty-six and $\frac{02}{100}$ dollars of said nine hundred and forty-eight and $\frac{72}{100}$ dollars is and was taxes and assessments, some levied and assessed in A. D. 1874, some thereof levied and assessed in A. D. 1875, and penalties and interest thereon against and upon said lots, and the remaining two and $\frac{70}{100}$ dollars thereof is and was cost of redemption. And on the fifth day of September, A. D. 1876, the

51 aforesaid lot number three was by the county treasurer of said county of Wyandotte duly sold for and because of the non-payment of certain taxes and assessments duly levied and assessed thereon in A. D. 1875, and on the 13th day of November, A. D. 1876, your orator duly redeemed said lot number three from the last-mentioned sale thereof by then paying to said county treasurer of said county of Wyandotte the sum of twenty-seven and $\frac{10}{100}$ dollars, that being the amount and sum then necessary and required to redeem the same lot three from said tax sale thereof. Twenty six and $\frac{60}{100}$ dollars of said twenty-seven and $\frac{10}{100}$ dollars is and was taxes and penalties and interest thereon against and upon said lot number three, and the remaining fifty cents of said twenty-seven $\frac{10}{100}$ dollars is and was cost of redemption, which taxes and assessments became and were due before September, A. D. 1876.

And divers taxes were duly levied and assessed on each of the above-

mentioned tracts of land in and during the year A. D. 1876, which last-mentioned taxes came due in December, A. D. 1876, and on the 22nd day of May, A. D. 1877, the last-mentioned taxes, with and including the penalties thereon, amounted to the sum of five hundred and sixty-four and $\frac{62}{100}$ dollars, and then and on said 22nd day of May, A. D. 1877, your orator paid the last-mentioned taxes, and so to do paid that sum of five hundred and sixty-four and $\frac{62}{100}$ dollars to said county treas-
52 urer of said county of Wyandotte, all which taxes had before then been long overdue; and one hundred and two and $\frac{40}{100}$ dollars of the last-mentioned taxes was taxes on and against the first above described tract of land.

And your orator says that interest to the first day of November, A. D. 1875, has been paid on the bond aforesaid, and although divers large sums of money has since then come due to your orator on said bond as and for interest thereon, part and so much of the interest therein specified, yet said William Cook did not, has not, nor has any person or persons ever paid the same, although said bond was duly presented at the first aforesaid office of your orator in Milwaukee aforesaid each time when any of the interest in said bond specified came due for payment of such interest and also for payment of said bond at each time on and after the first default, which default occurred on the first and fourth days of May, A. D. 1876.

And your orator further avers that said bond, the writing obligatory first aforesaid, was duly shown and presented for payment thereof and of the interest then due thereon at the aforesaid office of your orator in Milwaukee aforesaid on the first and fourth days of November, A. D. 1875, and on the first and fourth days of May and November, A. D. 1876.

And there is and was when and before this suit was first com-
53 menced in the district court in the county of Wyandotte, in the State of Kansas, divers sums of money, installments of interest on the bond, the writing obligatory first aforesaid, which had come due long before then, and was then and had for a long time before then been and still is overdue and payable and unpaid, and because thereof and of the other matters and things in this bill stated, your orator, before the commencement of this suit, at its option, elected that the whole amount of the principal sum mentioned in the bond and mortgage aforesaid be deemed to have become due and payable, and by and because of the option and election of your orator, the said bond and mortgage and the sums of money and interest therein specified, became due and payable before the commencement of this suit; of all which said William Cook in his lifetime, and said Jane Cook, and George P. Nelson, administrator as aforesaid, then and before then knew and had notice.

Yet said William Cook in his lifetime, Jane Cook, and George P. Nelson have not nor has any person or persons as yet ever paid to your orator the several sums of money above mentioned nor any nor either of them nor any part thereof, nor any interest thereon or on any thereof, nor any of the interest aforesaid, but on the contrary to pay the same or any thereof have hitherto and still do wholly neglect and re-
54 fuse, except the interest to the first day of November, A. D. 1875, paid as aforesaid.

And your orator avers that the sum of seven thousand one hundred and forty and $\frac{44}{100}$ dollars, with interest at the rate of twelve per cent. per annum on five thousand dollars thereof from the first day of November, A. D. 1875, and with interest at the same rate on nine hundred and seventy-five and $\frac{82}{100}$ dollars more thereof from the 13th day of No-

vember, A. D. 1876, and with interest at the same rate on five hundred and sixty-four and $\frac{62}{100}$ dollars more thereof from the 22nd day of May, A. D. 1877, is due and owing to your orator on and because of the matters in this bill mentioned.

And your orator hath frequently applied to the aforesaid William Cook in his lifetime, and since then to the said Jane Cook, George P. Nelson, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Nicholas McAlpine, Joseph Davis, the city of Wyandotte, Wilson Shannon, and Nelson Cobb and requested them and each of them to pay to your orator the several above-mentioned sums of money paid by your orator to the county treasurer of the aforesaid county of Wyandotte as aforesaid, and the aforesaid five thousand dollars in the aforesaid bond mentioned, with the interest thereon, according to the
55 tenor and effect of the bond aforesaid, or to release to your orator their equity of redemption in the lands aforesaid, but so it is, may it please your honors, that either to pay to your orator the several sums of money above mentioned or any or either of them or any part thereof or any interest thereon except the interest to the first day of November, A. D. 1875, paid as aforesaid, or to release such equity of redemption they have hitherto and still do wholly neglect and refuse, whereby and because of the matters aforesaid said mortgage has become absolute, and an action hath accrued to your orator to foreclose the same.

And your orator further avers that the mortgaged property, the several tracts of land in this bill mentioned, are insufficient to discharge the mortgage debt, the bond aforesaid, or the sum of five thousand dollars and interest therein specified, and that there is now due to your orator on said bond and the aforesaid mortgage divers sums of money, amounting in the aggregate to a sum of money larger in amount than the amount of the value of said property.

In consideration whereof your orator prays that a proper writ of subpœna be issued in this suit to and against the said John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Nicholas McAlpine, Joseph Davis, the city of Wyandotte, Wilson Shannon, and Nelson Cobb
56 returnable on the first rule day occurring after twenty days from the time of issuing thereof, and that they be required full, true, and perfect answer to make to all and singular the matters and things, allegations and averments herein contained, and that as fully, specifically, and particularly as if they and each of them were thereunto specifically interrogated, but, and your orator hereby expressly waives any answer under oath, and says that the answers in this suit need not any of them be under oath.

And your orator further prays that your honors do now forthwith appoint a receiver in this action, and authorize, direct, and empower him forthwith to take possession of the several tracts of land above mentioned and the buildings and improvements thereon and to keep possession of the same, and to receive and collect the rents, issues, and profits thereof and all such rents, issues, and profits as shall accrue or issue therefrom or from any thereof until further order of your honors, and to do such other and further acts respecting the property above mentioned as the court or your honors may from time to time authorize or order.

And your orator further prays that an account be taken of the amount of principal, interest, and per cent. due your orator on or because of the matters aforesaid, and that your honors find such amount, includ-
57 ing the solicitors and attorneys' fees aforesaid, to be the amount

of the sum of seven thousand one hundred and forty and $\frac{44}{100}$ dollars, with interest on five thousand dollars thereof at the rate of twelve per cent. per annum from the first day of November, A. D. 1875, and with interest on nine hundred and seventy-five and $\frac{82}{100}$ dollars more thereof at the same rate from the 13th day of November, A. D. 1876, and with interest on five hundred and sixty four and $\frac{62}{100}$ dollars more thereof at the same rate from the 22nd day of May, A. D. 1877, and that said George P. Nelson as such administrator as aforesaid be ordered, adjudged, and decreed to pay the same and the amount thereof with interest thereon at the rate aforesaid, and your orator's costs herein unto your orator within a short time, to be fixed by your honors.

And that it be further ordered, adjudged and decreed by your honors, that unless said George P. Nelson, as such administrator as aforesaid, or the said Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Nicholas McAlpine, Joseph Davis, The City of Wyandotte, Wilson Shannon and Nelson Cobb, or some one or more of them shall and do within such times as your honors shall fix therefor, pay the same to your orator, that the several tracts of land above mentioned be sold without redemption therefrom, and without appraisement
58 thereof by some special master to be appointed by your honors, and that the proceeds of such sales be applied to the payment to your orator of such amounts as shall be found due to your orator on and because of the matters aforesaid with interest thereon at the rate of twelve per cent. per annum and costs, and the taxes and penalties, and interest thereon against said tracts of land, and that the said Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Nicholas McAlpine, Joseph Davis, The City of Wyandotte, Wilson Shannon and Nelson Cobb, and said George P. Nelson, administrator as aforesaid, and each of them, and every person claiming by, from, through, or under them, or any or either of them, be forever barred and foreclosed of and from all and any right and equity of redemption, and other right whatever of, on, in, or to the aforesaid tracts of land and every of them, from and after such sale thereof, and that they the said Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Nicholas McAlpine, Joseph Davis, The City of Wyandotte, Wilson Shannon, Nelson Cobb, and George P. Nelson, and each of them, and all persons claiming from, through or under them, or any or either of them be ordered, required, adjudged, and decreed to deliver possession of the aforesaid tracts of land to the grantee or grantees in every deed made in
59 pursuance of such sale so soon as demand therefor shall be made.

And that your orator may have such other and further relief in the premises as its case may require, and it be entitled to, &c.

CLOUGH & WHEAT,

Counsel and Solicitors for the Northwestern Mutual Life Insurance Company, Plaintiff.

EXHIBIT No. 1.

Know all men by these presents that, I, William Cook of the city and county of Wyandott, and state of Kansas, am held and firmly bound unto The Northwestern Mutual Life Insurance Company, in the sum of ten thousand (10,000) dollars, lawful money of the United States of America, to be paid to the said The Northwestern Mutual Life Insurance Company, or to its certain attorneys, successors or assigns, to which payment well and truly to be made, I bind myself, my heirs, executors, and administrators, and each and every of them firmly by these pres-

ents. Sealed with my seal and dated the tenth day of December in the year of our Lord one thousand eight hundred and seventy-four.

The condition of this obligation is such, that if the above
60 bounden William Cook, his heirs, executors, administrators, or any of them, shall well and truly pay, or cause to be paid unto the above-mentioned The Northwestern Mutual Life Insurance Company, or to its certain attorneys, successors or assigns, the just and full sum of five thousand (5,000) dollars, at the expiration of five (5) years from the date of these presents with interest thereon until paid at the rate of twelve per centum per annum, payable semi-annually, on the first day of May and November in each and every year, both principal and interest payable at the office of said company in the city of Milwaukee, in the State of Wisconsin; and shall moreover well and truly keep and perform the covenants and agreements pertaining to insurance, taxes and assessments contained in a certain mortgage of even date herewith, executed by the said William Cook and Jane Cook, his wife, to the said The Northwestern Mutual Life Insurance Company. But in case of the non-payment of any sum of money, either of the said principal sum or interest thereon, or any insurance money, taxes or assessments, at the time or times when the same shall become due and payable agreeably to the terms and conditions of these presents or of the said mortgage, then in such case the whole amount of said principal sum shall at the option of the said The Northwestern Mutual Life Insurance Company, its successors or assigns, be deemed to have become due and payable
61 without any notice whatever (notice of such option being hereby expressly waived), and the same, together with all sums of money which may be paid by said The Northwestern Mutual Life-Insurance Company, its successors or assigns, for or on account of insurance, taxes, assessments, or prior liens, with interest thereon at the rate aforesaid, shall thereupon be collectable in a suit at law, or by a foreclosure of the said mortgage, in the same manner as if the whole of the said principal sum had been made payable at the time when any such failure in any payment shall occur as aforesaid: Provided, however, that if the said William Cook, his heirs, executors, or administrators, shall pay the whole principal sum above mentioned and interest thereon as aforesaid, and all sums, if any, which the said The Northwestern Mutual Life-Insurance Company, its successors or assigns, shall have paid for insurance, taxes, assessments, or prior liens, with interest thereon as aforesaid, according to the terms and conditions of these presents and of the said mortgage, without any fraud or other delay, then this obligation to be void and of no effect; otherwise to remain in full force and virtue.

The said William Cook hereby agrees to pay said sums and to perform the conditions of this bond, without any relief from any
62 valuation or appraisement laws, and hereby expressly waive appraisement, and waive and release all rights and benefits they have in said premises as a homestead under any act relating to the valuation and exemption of homesteads.

No payment of the principal of this bond shall be deemed valid except upon the joint receipt of the president and secretary of the said company.

WILLIAM COOK. [SEAL.]

Sealed and delivered in presence of—

EXHIBIT No. 2.

This indenture made the tenth day of December, in the year of our Lord one thousand eight hundred and seventy-four, between William Cook and Jane Cook, his wife, of the city and county of Wyandotte and State of Kansas, parties of the first part, and The Northwestern Mutual Life-Insurance Company, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of five thousand ($5,000) dollars to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said party of the second part, and to its successors and assigns forever, the following real estate lying and being in the county of Wyandott and State
63 of Kansas, and known and described as follows, viz:

Beginning at the southwest corner of the northwest quarter of section number fifteen (15), township number eleven (11), south of range number twenty five (25) east; thence east forty (40) poles; thence north two hundred and forty (240) poles, to the center of the north line of the southwest quarter of the southwest quarter of section number ten (10), township and range aforesaid; thence west forty (40) poles, to the northwest corner of the southwest quarter of the southwest quarter of said section number ten (10); thence south two hundred and forty (240) poles to the place of beginning, containing sixty (60) acres. Also lots number seven (7), twelve, (12), sixteen (16), seventeen (17), eighteen (18), nineteen (19), and twenty-two (22), in block number one hundred and thirty two, and lot number three (3), in block number one hundred and thirty-one (131), in the city of Wyandott, in the county and State aforesaid.

Together with the privileges and appurtenances to the same belonging, and all of the rents, issues, and profits which may arise or be had therefrom. To have and to hold the same to the said party of the second part, its successors and assigns, forever.

And the said William Cook, for himself, his heirs, executors,
64 administrators, and assigns, covenants and agrees with the said party of the second part, its successors and assigns, to keep the building or buildings now standing or which may hereafter be erected on the above-described premises insured against loss or damage by fire in some solvent incorporated insurance company or companies to be approved by said party of the second part, its successors or assigns, so long as the moneys hereby secured shall be unpaid to the amount of at least dollars, and to assign and keep assigned to said party of the second part, its successors and assigns, the policy or policies of such insurance, and to deposit the same with the said party of the second part, and to pay annually to the proper officers all taxes and assessments which shall be levied or assessed on said real estate or any part thereof; and to procure and deliver to the said party of the second part, at its office in the city of Milwaukee, in the State of Wisconsin, on or before the first day of May in each and every year, duplicate receipts of the proper officers for the payment of all such taxes and assessments levied or assessed on said premises for the preceding year, and in case of the failure to keep or continue such insurance, or to assign the policy or policies thereof, as above provided, or in case of the non-payment of any such taxes or assessments when the same shall become due and payable, the said party of the second part, its successors or assigns, may effect an insurance upon said build-
65 ing or buildings to the amount above named, and may pay

such taxes and assessments, with the accrued interest, officers' fees, and expenses thereon, and the amounts or sums so paid for premiums and expenses of insurances, and for taxes or assessments and officers' fees and expenses on account thereof, shall be immediately paid to the said party of the second part, its successors or assigns, and shall, unless so paid, be added to, and be deemed part and parcel of, the moneys secured hereby, and from the time of the payment thereof by the said party of the second part, the sums so paid shall bear interest at the same rate as the principal debt hereby secured, and that the said parties of the first part, at the time of the ensealing and delivery of these presents, are the true, lawful, and rightful owners and proprietors of the said premises above described and every part thereof, and are seized of a good, sure, perfect, and indefeasible estate of inheritance therein in fee simple; that they have good right, full power, and lawful authority to grant, bargain, sell and convey the said premises and every part thereof to the said party of the second part, in manner and form aforesaid; that the said premises are free and clear from all taxes, liens, and encumbrances whatsoever; and that the parties of the first part will ever warrant and defend the same to the party of the second part, its successors and assigns, against all claims whatsoever; provided always, that these presents are upon this express condition,

66 that if William Cook, one of said parties of the first part, his heirs, executors or administrators, shall pay or cause to be paid to the said party of the second part, its successors or assigns, the just and full sum of five thousand (5,000) dollars at the expiration of five (5) years from the date of these presents, with interest thereon until paid at the rate of twelve per centum per annum, payable semi-annually on the first day of May and of November of each and every year, both principal and interest payable at the office of said company in the said city of Milwaukee, according to the conditions of a bond bearing even date herewith, executed by William Cook, one of said parties of the first part, to the said party of the second part, and shall moreover keep such insurance as is above mentioned, and keep the policy or policies thereof assigned as aforesaid, and shall annually pay all taxes and assessments on said real estate, and procure and deliver the receipts therefor as aforesaid, then these presents, and said bond or writing obligatory, shall cease and be null and void.

But in case of the non-payment of any sum of money (either of principal, interest, insurance money, taxes, or assessments) at the time or times when the same shall become due, agreeably to the terms and conditions of these presents, or of the aforesaid bond, or any part thereof, then, in such case, the whole amount of said principal sum shall, at the

67 option of the said party of the second part, its successors or assigns, be deemed to have become due and payable, without any notice whatever (notice of such option being hereby expressly waived), and the same together with all sums of money which may be paid by said party of the second part, its successors or assigns, for or on account of insurance, taxes, assessments, or prior liens, with interest thereon at the rate aforesaid, shall thereupon be collectable in a suit at law or by foreclosure of this mortgage, in the same manner as if the whole of said principal sum had been made payable at the time when any such failure in any payment shall occur as aforesaid, and the judgment or decree in the suit brought to foreclose the same shall embrace with said principal debt, and interest, all sums so paid for or on account of insurance, taxes, assessments, or prior liens, with interest at the rate aforesaid, and it shall be lawful in such case for the said party of the second part, its successors or assigns, to grant, sell, and convey the said real estate,

with the appurtenances thereunto belonging, at public auction or vendue; and on such sale to make and execute to the purchaser or purchasers, his, her, or their heirs and assigns, forever, good and sufficient deeds of conveyance in the law pursuant to the statute in such case made and provided.

And in case suit shall be brought for the foreclosure of this mortgage, the said parties of the first part, for themselves, their heirs, rep-
68 resentatives and assigns, covenant and agree that they will pay to the said party of the second part, its successors or assigns, all expenses incurred in procuring and continuing abstracts of title for the purposes of the foreclosure suit, and will pay in addition to the taxable costs in such suit an adequate and reasonable sum as a solicitor's or attorney's fee, the amount thereof to be fixed by the court and to be included with the expenses for abstracts above mentioned in the judgment or decree.

The parties of the first part hereby covenant and agree to perform the covenants and conditions of this mortgage without any relief from any valuation or appraisement laws, and hereby expressly waive appraisement, and waive and release all rights and benefits they have in said premises as a homestead under any act relating to the alienation and exemption of homesteads.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

WILLIAM COOK. [SEAL.]
JANE COOK. [SEAL.]

Signed, sealed, and delivered in presence of—
JOHN GIBSON.
ALISON CROCKETT.

STATE OF KANSAS,
Wyandott County, ss:

Be it remembered that on this 19th day of December, A. D. 1874, before the undersigned, Alison Crockett, register of deeds in and
69,70 for the county and State aforesaid, duly commissioned and qualified, personally came William Cook and Jane Cook, his wife, who are personally known to me to be the same persons who executed the foregoing instrument of writing as grantors, and such persons duly and severally acknowledged the execution of the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year last written.

[L. S.] ALISON CROCKETT,
Register of Deeds, Wyandott County, State of Kansas.

(Mortgage endorsed:) 2851. William Cook & wf. to The Northwestern Mutual Life-Insurance Company. Mortgage. Dated the 10th day of Dec., 1874.

STATE OF KANSAS,
County of Wyandott, ss:

Received for record on the 29th day of December, A. D. 1874, at 10½ o'clock a. m., and recorded in volume "W" of mortgages, on pages 353, 354, 355, and 356.

ALISON CROCKETT,
Register of Deeds.

Fees, $, paid.

(Bill endorsed:) No. 1928. The Northwestern Mutual Life-Insurance Company vs. George P. Nelson, adm'r, &c., and others. Bill filed June 4, 1877. A. S. Thomas, clerk.

71 And on this day, to wit, June 4th, 1877, the complainant, by its solicitors, filed in the clerk's office of said court its security for costs in said entitled suit, which said security for costs is in the words and figures following, to wit:

Security for costs.

In the circuit court of the United States for the district of Kansas.

THE NORTHWESTERN MUTUAL LIFE-INSURance Company, plaintiff,
vs.
GEORGE P. NELSON, AS ADMINISTRATOR OF the estate of William Cook, deceased, Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Nicholas McAlpine, Joseph Davis, The City of Wyandotte, Nelson Shannon, and Nelson Cobb, defendants.

I enter myself security for costs in said case, and promise to pay all costs which may accrue to the opposite parties in this action, or to any of the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by it, I hereby agree and stipulate that execution may issue against my property for any costs taxed against it, said plaintiff.

Dated this 4th day of June, 1877.

L. B. WHEAT.

(Endorsed:) No. 1928. The Northwestern Mutual Life-Insurance Company vs. George P. Nelson, adm'r, et al. Sec. for costs.
72 Filed June 4, 1877. A. S. Thomas, clerk. Approved. A. S. Thomas, clerk.

73 And on this day, to wit, June 4th, 1877, the clerk of said court issued a writ of subpœna in said entitled action, which said writ of subpœna, with the endorsements and marshal's return thereon, is in the words and figures following, to wit:

Chancery subpœna.

UNITED STATES OF AMERICA,
District of Kansas, ss:

The United States of America to John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Nicholas McAlpine, Joseph Davis, The City of Wyandotte, Wilson Shannon, and Nelson Cobb, greeting:

We command you and every of you that you appear before our judge of our circuit court of the United States of America for the district of Kansas, at the city of Topeka, in said district, on the first Monday in the month of July next, to answer the bill of complaint of the Northwestern Mutual Life-Insurance Company against you and George P. Nelson, as administrator of the estate of William Cook, deceased, and Jane Cook, this day filed in the clerk's office of said court in said city of Topeka, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

74 To the marshal of the district of Kansas to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of Topeka, in said district, this 4th day of June, in the year of our Lord one thousand eight hundred and seventy-seven.

[SEAL OF CIRCUIT COURT.] A. S. THOMAS, *Clerk.*

MEMORANDUM.—The above-named defendants are notified that unless they enter their appearance in the clerk's office of said court, at the city of Topeka aforesaid, on or before the day to which the above writ is returnable, the complaint will be taken against them as confessed, and a decree entered accordingly.

A. S. THOMAS, *Clerk.*

(Endorsed:) No. 1928. Circuit court United States, district of Kansas. The Northwestern Mutual Life Ins. Co. vs. George P. Nelson et al. Chancery subpœna. Returnable to rule day, first Monday in July, A. D. 1877. A. S. Thomas, clerk. Clough & Wheat, comp'ts' sol's.

U. S. marshal's return.

Received the within writ June the 4th, 1877, and executed the same as follows, to wit: Served on the within-named defendants Wilson Shannon and Nelson Cobb at Leavenworth Co., State & dist. of Kansas, on the 5th day of June, 1877, by delivering to each of
75, 76 them personally a true & certified copy of this writ, with all the endorsements thereon.

CHAS. H. MILLER,
U. S. Marshal,
By GEO. L. SHARITT,
Deputy.

Rec'd this writ as above, and served same on the within named defendants John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Nicholas McAlpine, & Joseph Davis, at Wyandott Co., State and dist. of Kansas, on the 6th day of June, 1877, by delivering to each of them personally a true and certified copy of this writ with all the endorsements thereon, and served same on the within-named defendant The City of Wyandotte at the time and place last above mentioned, by delivering to Fred. Speck personally a like copy of this writ, he, said Fred. Speck, being then and there the mayor of said defendant The City of Wyandotte.

CHAS. H. MILLER,
U. S. Marshal,
By W. H. RYUS, *Deputy.*

Marshal's fees, $19.80.

Filed June 11, A. D. 1877.

A. S. THOMAS, *Clerk.*

77 And on this day, to wit, July 2nd, 1877, the defendant, George P. Nelson, administrator, &c., filed in the clerk's office of said court his answer in said entitled suit, which said answer is in the words and figures following, to wit:

Answer of George P. Nelson, adm'r, &c.

UNITED STATES OF AMERICA,
District of Kansas, ss:

In the circuit court of the United States for the district of Kansas.
In equity.

To the judges of the circuit court of the United States for the district of Kansas.

THE NORTHWESTERN LIFE INSURANCE COMpany of the city of Milwaukee and State of Wisconsin
against
GEORGE P. NELSON, AS ADMINISTRATOR OF the estate of William Cook, deceased, and other defendants.

Answer of George P. Nelson.

And now comes the defendant, George P. Nelson, as administrator of the estate of William Cook, and for his answer to the bill of complaint herein filed, says that he now and at all times hereafter, reserving to himself all benefit and advantage of exception which can or may be taken to any and all errors, uncertainties, and imperfections in the said complainant's bill of complaint contained that this defendant
78 may be advised is or may be material or necessary to him, says:

That he admits the execution of the bond and mortgage by Wm. Cook, deceased, as alleged in the complainant's bill of complaint, but avers and alleges that he has no knowledge of their contents, except as informed by complainant's bill herein, and pl'ff further avers that he admits the execution of said bond and mortgage not from any knowledge of his own, but from information and rumor, and this defendant leaves the complainant to make such proof thereof as it may deem advisable, and this def't further admits the death of said William Cook, as alleged in the complainant's bill, and that this defendant is the duly appointed administrator of the estate of said Cook, deceased, as alleged in said bill.

That this defendant denies that he has any personal interest or any interest whatever in said suit, except as hereinbefore stated, and this defendant further says that if there is anything in said bill touching the interest of this defendant, which is not herein well and sufficiently answered, confessed, traversed, denied, or avoided, that the same is not true to the knowledge or belief of this defendant, all of which he is ready and willing to aver, maintain, and prove, as your honorable court may direct.

Wherefore this defendant prays the court to be hence dismissed, with his costs and expenses herein wrongfully sustained.

79 GEORGE P. NELSON,
Administrator of the Estate of William Cook, deceased,
By W. J. BUCHAN,
His Attorney.

(Endorsed:) No. 1928. Circuit court of the United States, district of Kansas. Northwestern Mutual Life Ins. Company vs. Geo. P. Nelson et al. Answer of Geo. P. Nelson. Filed July 2, 1877. A. S. Thomas, clerk.

81 And on this day, to wit, July 2nd, 1877, the defendant, Jane Cook, by her solicitor, filed in the clerk's office of said court her answer in said entitled suit, which said answer is in the words and figures following, to wit:

Answer of Jane Cook.

UNITED STATES OF AMERICA,
District of Kansas, ss:

In the circuit court of the United States for the district of Kansas. In equity.

THE NORTHWESTERN MUTUAL LIFE INSURance Company of Milwaukee, in the State of Wisconsin,
against
GEORGE P. NELSON, AS ADMINISTRATOR OF the estate of William Cook, deceased, Jane Cook, and other defendants.

Answer of Jane Cook, one of the defendants herein.

And now comes Jane Cook, one of the defendants in this cause, and for her separate answer to the bill of complaint herein filed, says she now and at all times hereafter reserving to herself all benefit and advantage of exception which may or can be taken to any and all errors, uncertainties, and imperfections in the said complainant's bill of complaint contained as this defendant may be advised is or are material or necessary for her, says:

That she admits the execution of the bond in writing obligatory
82 by her said husband William Cook, but expressly denies all knowledge of the conditions or contents thereof as set forth in the bill of complaint herein.

And this defendant denies the execution of the mortgage as set forth in said bill of complaint. And this defendant alleges that on or about the time mentioned in the plaintiff's bill as the time when said bond and mortgage therein set out were executed, the said William Cook, her husband, requested her (this def't) to sign a mortgage to the plaintiff as mortgagee, to secure a loan of money to be loaned by the plaintiff to him, said William Cook, her husband, and informed her that such mortgage was upon certain lots of his in Wyandotte City, and upon this defendant asking him, her said husband, to let her read the said mortgage, he, her said husband, refused to permit this defendant to read the same. This defendant then asked whether said mortgage covered her land outside the city, and was told by her said husband that it did not, but this defendant refused to sign the same, whereupon her said husband took hold of this defendant, and by physical force seated this defendant in a chair at the table and put a pen in her hand, and placing his hands on this defendant's shoulder and arm, commanded and compelled her to write her name, which she did and not otherwise, and not of her own free will and accord, but that she was compelled to sign said mortgage by force and threats of
83 her said husband and that the same was signed under duress, by actual force, physical coercion, and the use of violence and compulsion of her said husband, and through and by such duress, force,

physical coercion, and not otherwise, she was made to sign such mortgage, and this defendant avers and alleges that such mortgage is not her deed.

And this defendant, further answering, says that afterwards, when Allison Crocket, the officer certifying to the acknowledgment of said mortgage, came into the room where this defendant was to take such acknowledgment, said Crocket informed defendant that said mortgage was upon some city lots belonging to her husband and did not cover her land. That defendant believed said declaration to be true, that said Crocket did not read said mortgage to defendant or otherwise explain the contents thereof, except as herein stated; that defendant did not read said mortgage, because she believed the declaration of said Crocket to be true, and feared to offend her husband by refusing to acknowledge the signature to said mortgage as hers.

And this defendant, further answering, says that the following described parcel or piece of land set out in the complainant's bill of complaint, to wit:

84 Beginning at the southwest corner of the northwest quarter of section number fifteen (15), township number eleven (11) south, of range number twenty-five (25) east; thence east forty (40) poles; thence north two hundred and forty (240) poles to the centre of the north line of the southwest quarter of the southwest quarter of section number ten (10), township and range aforesaid; thence west forty (40) poles to the northwest corner of the southwest quarter of said section number ten (10); thence south two hundred and forty (240) poles to the place of beginning, containing sixty (60) acres, was and is now the separate property of this defendant, which she owned before her marriage to her said husband, William Cook, which fact was at the time of the several matters herein set forth known both by her said husband and said Allison Crocket.

And defendant, further answering, says that she is informed and believes, and therefore alleges and avers, that the said Allison Crocket was the agent of the plaintiff herein in loaning money to her said husband, William Cook, and taking said mortgage in security therefor; and when he took said acknowledgment and made the representations aforesaid that this defendant's land was not included in said mortgage, he was acting as the agent of the plaintiff herein, and that he then had

85 full knowledge and well knew that the land above described was the property of this defendant and was included in said mortgage.

And this defendant admits that her said husband departed this life on the 4th day of September, A. D. 1876, leaving this defendant his widow and heir at law; and defendant further admits that on the 22nd day of September the said George P. Nelson was by the probate court of Wyandotte County duly appointed his administrator.

And this defendant further says that if there is anything in said bill of complaint touching the interest of this defendant that *that* is not herein well and sufficiently answered, confessed, traversed, denied, or avoided, that the same is not true to the knowledge and belief of this defendant. All of which this defendant is ready and willing to aver, maintain, and prove as the court may direct.

Whereupon this defendant prays that by the decree in this cause to be rendered that her said land above described as the land of this defendant be exempted from foreclosure or sale to be decreed in this suit,

and that she recover her cost and expenses in this behalf most wrongfully sustained.

JANE COOK.
JANE COOK,
Defendant,
By W. J. BUCHAN & N. COBB,
Her Attorneys.

UNITED STATES OF AMERICA,
District of Kansas, ss:

Jane Cook, being duly sworn, deposes and says that she is the
86 defendant named in the foregoing answer subscribed by her; that she has read the same and knows the contents thereof, and that the same is true of her own knowledge, except as to matters therein stated on information & belief, and as to those matters she verily believes it to be true.

JANE COOK.

Subscribed and sworn to before me this 2nd day of July, 1877.
D. R. CHURCHILL,
Commissioner U. S. Circuit, Dist. of Kansas.

(Endorsed:) No. 1928. In the circuit court United States, district of Kansas. Northwestern Life-Ins. Company vs. G. P. Nelson, adm'r, et al. Answer of Jane Cook. Filed July 2, 1877. A. S. Thomas, clerk.

87 And on this day, to wit, July 2nd, 1877, the defendants, The City of Wyandotte, C. W. Twist, John Gibson, Joseph Davis, Lucretia Riley, and Philip Kaiser, by their solicitor, filed in the clerk's office of said court their joint and several answers in said entitled suit, which said joint and several answer is in the words and figures following, to wit:

Answer of The City of Wyandotte, C. W. Twist, John Gibson, Joseph Davis, Lucretia Riley, and Philip Kaiser.

UNITED STATES OF AMERICA,
District of Kansas, ss:

In the circuit court of the United States for the district of Kansas. In equity.

To the judges of the circuit court of the United States for the district of Kansas.

THE NORTHWESTERN MUTUAL LIFE INSURance Company of the city of Milwaukee and State of Wisconsin,
against
GEORGE P. NELSON, AS ADMINISTRATOR OF the estate of William Cook, deceased, Jane John Cook, Gibson, Philip Kaiser, Lucretia Riley, C. W. Twist, Nicholas McAlpine, The City of Wyandotte, Wilson Shannon, Nelson Cobb, and Joseph Davis.

Joint and several answers of The City of Wyandotte, C. W. Twist, John Gibson, Joseph Davis, Lucretia Riley, and Philip Kaiser, defendants herein.

And now comes The City of Wyandotte, C. W. Twist, John Gib-

88 son, Joseph Davis, Lucretia Riley, and Philip Kaiser, and for their joint and several answers to the bill of complaint herein filed, say, each for themselves, that they, now and at all times hereafter reserving to themselves and each of them all benefit and advantage of exception which may or can be taken to any errors, uncertainties, and imperfections in the said complainant's bill of complaint contained, as these defendants are advised is or are material or necessary for them or each of them, they severally answer and say that they do not know of their own knowledge, and never have been informed, save by rumor and the said complainant's bill, whether or not the said William Cook in his lifetime, to wit, on the 10th day of December, 1874, made, executed, and delivered his certain bond in writing, as set out and charged in the said complainant's bill, nor do these defendants know anything at all about the terms, conditions, and stipulations thereof, and they leave the said complainant to make such proof thereof as to it may seem best.

And the said defendants further say that they do not know, except by the said complainant's bill, that the said William Cook, in his lifetime, and the said Jane Cook, his wife, made, executed, and delivered to the complainant their certain mortgage deed, to secure the payment of the said sum of money set out in said bond aforesaid, nor do these defendants know the contents and provisions of said mortgage, and they
89 each leave the said complainant to make such proof thereof as to it may seem just.

And the said C. W. Twist, John Gibson, Philip Kaiser, and Lucretia Riley, each say for themselves that they admit that they are tenants, occupying the several lots as charged by the complainant, and that they rented said property severally of the agent of said William Cook, and that they claim no further interest in the said property than above stated.

And the said def't Joseph Davis avers and alleges that he is a tenant occupying the real estate as charged in complainant's bill, but denies that he rented the same of said William Cook, deceased. And the said defendant avers and alleges that the said real estate so occupied by him as aforesaid is and was the separate property of the said Jane Cook before her marriage to said William Cook, and that he rented and occupied the same of and under the said Jane Cook before such marriage to said William Cook.

And the said City of Wyandotte for itself avers and alleges that it recovered a judgment for costs in the sum of forty-five dollars in the dist. court of said Wyandotte County, Kansas, at the term, , 187 , against said William Cook et al., and that such judgment still remains unsatisfied and in full force and effect.

And these defendants jointly and severally say that they have each for themselves answered all things in said bill of complaint charged
90 to the best of their knowledge and belief, and that if there is anything in said bill touching the interests of these defendants which is not herein well and sufficiently answered, confessed, traversed denied, or avoided, that the same is not true to the knowledge or belief of these defendants. All of which these defendants are ready and willing to aver, maintain, and prove as this honorable court may direct. And said defendants & each and all of them most humbly pray to be

hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

THE CITY OF WYANDOTTE,
JOHN GIBSON,
JOSEPH DAVIS,
CHAS. W. TWIST,
LUCRETIA RILEY,
PHILIP KAISER,
By W. J. BUCHAN, *their Att'y.*

(Endorsed:) No. 1928. Circuit court of the United States, dist. of Kansas. Northwestern Life Insurance Comp'y vs. Geo. P. Nelson et al. Answer of def'ts. Filed July 2, 1877. A. S. Thomas, clerk.

91 And on this day, to wit, August 3rd, 1877, the complainant, by its solicitors, filed in the clerk's office of said court its replication to the answer of George P. Nelson, as administrator of the estate of William Cook, deceased, which said replication is in the words and figures following, to wit:

Replication to answer of Geo. P. Nelson, adm'r, &c.

UNITED STATES OF AMERICA,
District of Kansas, ss:

In the circuit court of the United States for the district of Kansas.

THE NORTHWESTERN MUTUAL LIFE INSURance Company, plaintiff,
vs.
GEORGE P. NELSON, AS ADMINISTRATOR OF the estate of William Cook, deceased, Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Nicholas McAlpine, Joseph Davis, The City of Wyandotte, Wilson Shannon, and Nelson Cobb, defendants.

The replication of The Northwestern Mutual Life Insurance Company, the above-named plaintiff, to the answer of George P. Nelson, as administrator of the estate of William Cook, deceased, one of the above-named defendants:

This repliant, saving and reserving to itself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith, that it will aver and prove its said
92 bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

CLOUGH & WHEAT,
Counsel for Plaintiff.

(Endorsed:) No. 1928. The Northwestern Mutual Life Insurance Company vs. George P. Nelson, adm'r, &c., et al. Replication to answer of George P. Nelson, adm'r, &c. Filed Aug. 3, 1877. A. S. Thomas, clerk. Clough & Wheat.

93 And on this day, to wit, August 3rd, 1877, the complainant, by its solicitors, filed in the clerk's office of said court its replication to the answer of Jane Cook, which said replication is in the words and figures following, to wit:

Replication to answer of Jane Cook.

UNITED STATES OF AMERICA,
District of Kansas, ss:

In the circuit court of the United States for the district of Kansas.

THE NORTHWESTERN MUTUAL LIFE INSURANCE Company, plaintiff,
vs.
GEORGE P. NELSON, AS ADMINISTRATOR OF the estate of William Cook, deceased, Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Nicholas McAlpine, Joseph Davis, The City of Wyandotte, Wilson Shannon, and Nelson Cobb, defendants.

The replication of The Northwestern Mutual Life Insurance Company, the above-named plaintiff, to the answer of Jane Cook, one of the above-named defendants:

This repliant, saving and reserving to itself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto says that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and
94 insufficient to be replied unto by this repliant without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

CLOUGH & WHEAT,
Counsel for Plaintiff.

(Endorsed:) No. 1928. The Northwestern Mutual Life Insurance Company vs. George P. Nelson, adm'r, &c., et al. Replication to answer of Jane Cook. Filed Aug. 3, 1877. A. S. Thomas, clerk. Clough & Wheat.

95 And on this day, to wit, August 3rd, 1877, the complainant, by its solicitors, filed in the clerk's office of said court its replication to the answer of The City of Wyandotte, C. W. Twist, John Gibson, Joseph Davis, Lucretia Riley, and Philip Kaiser, which said replication is in the words and figures following, to wit:

Replication to answer of The City of Wyandotte, C. W. Twist, John Gibson, Joseph Davis, Lucretia Riley, & Philip Kaiser.

UNITED STATES OF AMERICA,
District of Kansas, ss:

In the circuit court of the United States for the district of Kansas.

THE NORTHWESTERN MUTUAL LIFE INSURance Company, plaintiff,
vs.
GEORGE P. NELSON, AS ADMINISTRATOR OF the estate of William Cook, deceased, Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Nicholas McAlpine, Joseph Davis, The City of Wyandotte, Wilson Shannon, and Nelson Cobb, defendants.

The replication of The Northwestern Mutual Life Insurance Company, the above-named plaintiff, to the answer of The City of Wyandotte, C. W. Twist, John Gibson, Joseph Davis, Lucretia Riley, and Philip Kaiser, defendants above named:

This repliant, saving and reserving to itself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto says that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered
96 unto; and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

CLOUGH & WHEAT,
Counsel for Plaintiff.

(Endorsed:) No. 1928. The Northwestern Mutual Life Insurance Company vs. George P. Nelson, adm'r, &c., et al. Replication to answer of The City of Wyandotte et al. Filed Aug. 3, 1877. A. S. Thomas, clerk. Clough & Wheat.

97, 98 And on this day, to wit, August 6th, A. D. 1877, the clerk of said court made the following entry on the order book of said court, in the words and figures following, to wit:

Order pro confesso as to def'ts Nicholas McAlpine, Wilson Shannon, & Nelson Cobb.

THE NORTHWESTERN MUTUAL LIFE INS. CO. *vs.* GEORGE P. NELSON, ADM'R, &C., ET AL. } 1928. In equity.

The subpœna issued in the above cause having been returned, which return has been filed, and it appearing therefrom that said subpœna

was duly served on Nicholas McAlpine, Wilson Shannon, and Nelson Cobb, three of the defendants herein, and no appearance having been entered on the part of said defendants, or plea or answer filed, therefore, on motion of Clough & Wheat, solicitors for complainant, it is ordered and decreed that the bill herein be taken pro confesso as to the said Nicholas McAlpine, Wilson Shannon, and Nelson Cobb, defendants herein.

99 And on this day, to wit, October 27th, 1877, the complainant by its solicitors filed in the clerk's office of said court its motion for a receiver in said entitled suit, which said motion for a receiver is in the words and figures following, to wit:

Motion for a receiver.

UNITED STATES OF AMERICA,
District of Kansas, ss:

In the circuit court of the United States for the district of Kansas.

THE NORTHWESTERN MUTUAL LIFE INSURance Company, plaintiff,
vs.
GEORGE P. NELSON, AS ADMINISTRATOR OF the estate of William Cook, deceased, Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Nicholas McAlpine, Joseph Davis, the City of Wyandotte, Wilson Shannon, and Nelson Cobb, defendants.

And now comes the plaintiff in this the above entitled suit and moves the above named circuit court and the judges thereof to appoint a receiver in said suit, and to authorize and direct him to enter into and upon and to take and keep possession of the several lots and tracts of land mentioned in the bill of complaint in said suit, and to receive and collect the rents, issues, and profits thereof, and to do such acts respecting said property, the lots and tracts of land aforesaid, as the
100 court may from time to time authorize or direct for the following reasons, namely:

First. Because said lots and tracts of land are not of value sufficient to discharge the mortgage debt, the claims against it, the same described in said bill, and the condition of the mortgage in said bill described has not been complied with or performed, and said debt has become due.

Second. Because the mortgage debt has become due by reason and because of the non-payment of interest and taxes as stated in the aforesaid bill, and it is in said mortgage agreed that in such case plaintiff should be entitled to a sale of said lots and tracts of land as shown in said mortgage deed, and said lots and tracts of land are not worth enough to satisfy the claims sued on.

CLOUGH & WHEAT,
Attorneys for Plaintiff.

(Endorsed:) No. 1928. The Northwestern Mutual Life Insurance Company vs. George P. Nelson, adm'r, &c., et al. Filed Oct. 2, 1877. A. S. Thomas, clerk.

101 And on this day, to wit, October 9th, 1877, the complainant, by its solicitors, filed in the clerk's office of said court a notice in said entitled suit, which said notice is in the words and figures following, to wit:

Notice.

UNITED STATES OF AMERICA,
District of Kansas, ss:

In the circuit court of the United States for the district of Kansas.

THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, plaintiff,
vs.
GEORGE P. NELSON, AS ADMINISTRATOR OF the estate of William Cook, deceased, Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Nicholas McAlpine, Joseph Davis, The City of Wyandotte, Wilson Shannon, and Nelson Cobb, defendants.

The defendants in this the above entitled suit are hereby notified that the plaintiff in said suit will, on Monday, the eight' day of October, A. D. 1877, at ten o'clock a. m. of that day, or so soon thereafter as it can be heard at the court room where the above named circuit court of the United States for the district of Kansas is usually held, in the city of Leavenworth, in the State of Kansas, apply to and move said circuit court, and such of the judges thereof as shall be then there pres-
102 ent, for an order for the appointment of and to appoint a receiver in said action, and to authorize and direct him to enter into and upon and to take and keep possession of the several lots and tracts of land mentioned in the bill of complaint in said suit, and to receive and collect the rents, issues, and profits thereof, and to do such acts respecting said property, the lots and tracts of land aforesaid, as the court may from time to time authorize or direct.

And you are further notified that affidavits and other evidence will be used on the hearing of said application and motions.

Dated this 26th day of September, A. D. 1877.

CLOUGH & WHEAT,
Attorneys for Plaintiff.

I hereby accept service of the within notice of application for appointment of receiver.

Wyandott City, Kansas, Sept. 29th, 1877.

W. J. BUCHAN,
Att'y for Defendants Geo. P. Nelson, adm'r of the estate of William Cook, dec'd, Jane Cook, John Gibson.

(Endorsed:) No. 1928. The Northwestern Mutual Life Insurance Company vs. George P. Nelson, adm'r, &c., et al. Notice. Filled Oct. 9, 1877. A. S. Thomas, clerk.

103 And on this day, to wit, October 9, 1877, there was filed in the clerk's office of said court the affidavit of L. C. Trickey in said entitled suit, which said affidavit is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District of Kansas, ss:

In the circuit court of the United States for the district of Kansas.

THE NORTHERN MUTUAL LIFE INSURANCE Company, plaintiffs,
vs.
GEORGE P. NELSON AS ADMINISTRATOR OF the estate of William Cook, deceased, Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Nicholas McAlpine, Joseph Davis, The City of Wyandott, Wilson Shannon, and Nelson Cobb, defendants.

STATE OF KANSAS,
County of Wyandott, ss:

L. C. Trickey, of lawful age, being first duly sworn, does on oath depose and say that he is a resident of the county of Wyandott and State of Kansas; that he is acquainted with the value of the following-described tract, pieces and parcels of land situate in the county of Wyandott and State of Kansas, lots numbered seven (7), twelve (12), sixteen (16), seventeen (17), eighteen (18), nineteen (19), and twenty-one (21), in block numbered one hundred and thirty-two (132), in the city of Wyandott, and lot numbered three (3) in block numbered one hundred and thirty-one (131), in the city of Wyandott, all in the county of Wyandott and State of Kansas, together with the privileges and appurtenances thereunto belonging.

104 And affiant deposes and says that he is also acquainted with the value of real property in the vicinity of said lands, and that in his opinion said lots are not worth at the present time more than two thousand two hundred and seventy ($2,270.00), and that they are not altogether in the aggregate according to the ruling and selling prices worth more than that amount, and valued as follows, to wit:

Lot seven (7), in block one hundred and thirty-two	$185 00
" twelve (12), with one-story frame-house, in block 132	185 00
" sixteen (16), with one-story frame-house, "	275 00
" seventeen (17), in block 132	275 00
with one-story frame-house thereon	275 00
" 18, with one-story frame-house thereon, b'k 132	275 00
" 19, " " " "	275 00
" 22, " " " " " 132	275 00
" 3, " " " " " 131	250 00
	$2,270 00

L. C. TRICKEY.

Subscribed in my presence and sworn to before me, the undersigned, a notary public within and for the county of Wyandott, in the State of Kansas, this 6th day of October, A. D. 1877.

In witness whereof I have hereunto set my hand and affixed my notarial seal the day and year last aforesaid.

[SEAL.]

F. B. ANDERSON,
Notary Public.

(Endorsed:) No. 1928. The Northwestern Mut'l Life Insurance Co. vs. George P. Nelson, adm'r, &c., et al. Affidavit filed Oct. 9, 1877. A. S. Thomas, clerk.

105 And on this day, to wit, October 9, 1877, there was filed in the clerk's office of said court the affidavit of J. P. Faber in said entitled suit, which said affidavit is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District of Kansas, ss:

In the circuit court of the United States for the district of Kansas.

THE NORTHWESTERN MUTUAL LIFE INSURance Company, plaintiffs,
vs.
GEO. P. NELSON, ADMINISTRATOR OF THE estate of William Cook, deceased, Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Nicholas McAlpine, Joseph Davis, The City of Wyandotte, Wilson Shannon, and Nelson Cobb, defendants.

STATE OF KANSAS,
County of Wyandott, ss:

J. P. Faber, of lawful age, being first duly sworn, does on oath depose and say that he is a resident of the county of Wyandott and State of Kansas; that he is by occupation a farmer and market gard'ner; that he has been more or less engaged for the past two years in the purchase and sale of real estate in the county of Wyandott; that he is acquainted with and knows the value of what is known as the Jane Cook land, situated in the county of Wyandott an' State of Kansas, more particularly described as follows, to wit:

Commencing at the southwest corner of the northwest quarter of section numbered fifteen (15), in township number eleven (11) south, of the base line of range numbered twenty-five (25) east, of the sixth
106 principal meridian; running thence east 40 poles; thence north two hundred and *and* forty poles to the center of the north line of the southwest quarter of the southwest quarter of section number ten (10) in the township and range aforesaid, and running thence west forty (40) poles to the northwest corner of the southwest quarter of the southwest quarter of said section number ten (10); running thence south two hundred and forty (240) poles to the place of beginning, containing sixty acres.

That he is also acquainted with the value of lands in the vicinity of said land, and that in his opinion said tract of land, with the appurtenances and privileges thereto appertaining, would not at the present time sell for more than fifty dollars per acre, or in the aggregate three thousand dollars; and that according to ruling and selling prices is not worth more than that amount now.

J. P. FABER.

Subscribed in my presence and sworn to before me, the undersigned, a notary public within and for the county of Wyandott, this 3rd day of October, A. D. 1877.

In witness whereof I have hereunto set my hand and affixed my notarial seal the day and year last aforesaid.

F. B. ANDERSON,
Notary Public.

(Endorsed:) No. 1928. The Northwestern Mut'l Life Insurance Co. vs. George P. Nelson, adm'r, &c., et al. Affidavit. Filed Oct. 9, 1877. A. S. Thomas, clerk.

107 And on this day, to wit, October 9, 1877, there was filed in the clerk's office of said court the affidavit of Nicholas McAlpine in said entitled suit, which said affidavit is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District of Kansas, ss:

In the circuit court of the United States for the district of Kansas.

THE NORTHWESTERN MUTUAL LIFE INSURance Company, plaintiff,
vs.
GEORGE P. NELSON AS ADMINISTRATOR OF the estate of William Cook, deceased, Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Nicholas McAlpine, Joseph Davis, The City of Wyandott, Wilson Shannon, and Nelson Cobb, defendants.

STATE OF KANSAS,
County of Wyandott:

Nicholas McAlpine, of lawful age, being first duly sworn, does on oath depose and say that he is a resident of the city of Wyandott in the county of Wyandott and State of Kansas; that he is acquainted with the value of the tract of land known as the Jane Cook land situate in the county of Wyandott and State of Kansas, and more particularly described as follows, to wit:

Commencing at the southwest corner of the northwest quarter of section numbered fifteen (15), in township numbered eleven (11) south, of the base line of range number twenty-five (25) east, of the sixth principal meridian, in Kansas; running thence east forty (40) poles;
108 running thence north two hundred and forty (240) poles to the center of the north line of the southwest quarter of the southwest quarter of section number ten (10) in the township and range aforesaid; running thence west forty (40) poles to the northwest corner of the southwest quarter of the southwest quarter of said section number ten (10); running thence south two hundred and forty (240) poles to the place of beginning, containing sixty acres.

Affiant also further deposes and says that he is acquainted with the value of real property in the vicinity of said lands, and that in his opinion said tract of land would not at the present time sell for more than fifty ($50) dollars per acre or three thousand dollars for the whole tract.

NICHOLAS McALPINE.

Subscribed in my presence and sworn to before me, the undersigned, a notary public in and for said county of Wyandott and State of Kansas, this day of October, 1877.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year last aforesaid.

[SEAL.] M. B. NEWMAN,
Notary Public.

(Endorsed:) No. 1928. The Northwestern Mutual Life Insurance Co. vs. George P. Nelson, adm'r, &c., et al. Affidavit. Filed Oct. 9, 1877. A. S. Thomas, clerk.

109 And on this day, to wit, October 9, 1877, there was filed in the clerk's office of said court the affidavit of John Arthur in said entitled suit, which said affidavit is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District of Kansas, ss:

In the circuit court of the United States for the district of Kansas.

THE NORTHWESTERN MUTUAL LIFE INSURance Company, plaintiff,
vs.
GEORGE P. NELSON AS ADMINISTRATOR OF the estate of William Cook, deceased, Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Nicholas McAlpine, Joseph Davis, The City of Wyandott, Wilson Shannon, and Nelson Cobb, defendants.

STATE OF KANSAS,
County of Wyandott, ss:

I, the undersigned, John Arthur, of lawful age, being first duly sworn, do on oath depose and say that I am a resident of the city of Wyandott in the county of Wyandott and State of Kansas, and that I am acquainted with the value of real estate in and about said city of Wyandott; that I am acquainted with the following described tract of land situated in the said county of Wyandott and State of Kansas (and known as the property of Jane Cook and know the value thereof), and described as follows, to wit:

Beginning at the southwest corner of the northwest quarter of section number fifteen (15), in township number eleven (11), south, of the
110 base line of range number twenty-five (25) east, of the sixth principal meridian; running thence east forty (40) poles; running thence north two hundred and forty (240) poles to the center of the north line of the southwest quarter of section number ten (10) in the township and range aforesaid; running thence west forty (40) poles to the northwest corner of the southwest quarter of the southwest quarter of said section number ten (10); running thence south two hundred and forty (240) poles to the place of beginning, containing sixty acres.

That the said tract of land with the privileges and appurtenances belong' to the same is not worth over the sum of forty-five dollars per acre; that I am acquainted with the value of real property lying in the vicinity of said tract of land, and that in my opinion said tract of land would not at the present time sell for more than forty-five doll. per acre or according to selling and ruling prices.

JOHN ARTHUR.

Subscribed in my presence and sworn to before me, the undersigned, a notary public within and for the county of Wyandott, in the State of Kansas, this 6th day of October, A. D. 1877.

In witness whereof I have hereunto set my hand and affixed my notarial seal the day and year last aforesaid.

[SEAL.] F. B. ANDERSON,
Notary Public.

(Endorsed:) No. 1928. The Northwestern Mut'l Life Insurance Co. vs. George P. Nelson, adm'r, &c., et al. Affidavit. Filed Oct. 9, 1877. A. S. Thomas, clerk.

111 And on this day, to wit, October 9, 1877, there was filed in the clerk's office of said court the affidavit of Chas. Morasch in said entitled suit, which said affidavit is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District of Kansas, ss:

In the circuit court of the United States for the district of Kansas.

THE NORTHWESTERN MUTUAL LIFE INSURance Company, plaintiff,
vs.
GEORGE P. NELSON, ADMINISTRATOR OF THE estate of William Cook, dec'd; Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Nicholas McAlpine, Joseph Davis, The City of Wyandott, Wilson Shannon, and Nelson Cobb, defendants.

STATE OF KANSAS,
County of Wyandott, ss:

Chas. Morasch, of lawful age, being first duly sworn, does on oath depose and say that he is a resident of the county of Wyandott and State of Kansas; the he is acquainted with the value of real estate in the county of Wyandott and State of Kansas; that he is acquainted with the following described real estate known as the Jane Cook land, to wit:

Commencing at the southwest corner of the northwest quarter of section numbered fifteen (15), in township numbered eleven (11) south, of the base line of range numbered twenty-five (25) east, of the sixth principal meridian; running thence east forty (40) poles; running
112 thence north two hundred and forty (240) poles to the center of the north line of the southwest quarter of the southwest quarter of section number ten (10), in the township and range aforesaid; running thence west forty (40) poles to the northwest corner of the southwest quarter of the southwest quarter of said section number ten (10); running thence south two hundred and forty (240) poles to the place of beginning, containing sixty acres of land.

That he is acquainted with the value of real property in the vicinity of said tract, and that in his opinion said tract of land would not at the present time sell for more than forty dollars per acre, or two thousand four hundred dollars for the whole tract, and that according to ruling and selling prices it is not worth more than that amount.

CHARLES MORASCH.

Subscribed in my presence and sworn to before me, the undersigned, a notary public within and for the county of Wyandott, in the State of Kansas, this day of October, A. D. 1877.

In witness whereof I have hereunto set my hand and affixed my notarial seal the day and year last aforesaid.

[SEAL.] F. B. ANDERSON,
Notary Public.

(Endorsed:) No. 1928. The Northwestern Mut'l Life Insurance Co. vs. George P. Nelson, adm'r, &c., et al. Affidavit. Filed Oct. 9, 1877. A. S. Thomas, clerk.

113 And on this day, to wit, Oct. 9, 1877, there was filed in the clerk's office of said court the affidavit of D. M. Smith in said entitled suit, which said affidavit is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District of Kansas, ss:

In the circuit court of the United States for the district of Kansas.

THE NORTHWESTERN MUTUAL LIFE INSURance Company, plaintiff,
vs.
GEORGE P. NELSON, ADMINISTRATOR OF THE estate of William Cook, dec'd; Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Nicholas McAlpine, Joseph Davis, The City of Wyandott, Wilson Shannon, and Nelson Cobb, defendants.

STATE OF KANSAS,
County of Wyandott, ss:

D. M. Smith, of lawful age, being first duly sworn, does on oath depose and say that he is a resident of the city of Wyandott, in the county of Wyandott and State of Kansas; that he is a real estate agent, and the owner of abstract title records of the land in the said county of Wyandott; that he is acquainted with the following-described land situated in the county of Wyandott, known as "the Jane Cook land," to wit:

Beginning at the southwest corner of the northwest quarter of section number fifteen (15), in township numbered eleven (11) south, of the base line of range numbered twenty-five (25) east, of the
114 sixth principal meridian; running thence east forty poles; thence north two hundred and forty (240) poles to the center of the north line of the southwest quarter of the southwest quarter of section number ten (10), in the township and range aforesaid; and running thence west forty poles to the northwest corner of southwest quarter of the southwest quarter of said section numbered ten; running thence south two hundred and forty (240) poles to the place of beginning, containing sixty acres.

That he is also acquainted with the value of lands in that vicinity, and that in his opinion said tract of land, with the appurtenances and privileges thereto appertaining, would not at the present time sell for more than sixty dollars per acre, or in the aggregate three thousand

six hundred dollars, and that according to ruling and selling prices is not worth more than that amount now.

DAVID M. SMITH.

Subscribed in my presence and sworn to before me, the undersigned, a notary public within and for the county of Wyandott, this third day of October, A. D. 1877.

In witness whereof I have hereunto set my hand and affixed my notarial seal the day and year last aforesaid.

[SEAL.] F. B. ANDERSON,
Notary Public.

(Endorsed:) No. 1928. The Northwestern Mutual Life Insurance Co. vs. George P. Nelson, adm'r, &c., et al. Affidavit. Filed Oct. 9, 1877. A. S. Thomas, clerk.

115 And on this day, to wit, Oct. 9, 1877, there was filed in the clerk's office of said court the affidavit of A. N. Moyer in said entitled suit, which said affidavit is the words and figures following, to wit:

UNITED STATES OF AMERICA,
District of Kansas, ss:

In the circuit court of the United States for the district of Kansas.

THE NORTHWESTERN MUTUAL LIFE INSURANCE Company, plaintiff,
vs.
GEORGE P. NELSON, ADMINISTRATOR OF THE estate of William Cook, deceased, Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Nicholas McAlpine, Joseph Davis, The City of Wyandott, Wilson Shannon, and Nelson Cobb, defendants.

STATE OF KANSAS,
County of Wyandott, ss:

A. N. Moyer, of lawful age, being first duly sworn, does on oath depose and say that he is a resident of the city of Wyandott, in the county of Wyandott, and State of Kansas; that he is one of the firm of Armstrong and Moyer, real estate and insurance agents, who are and have been for a long time engaged in handling real estate in the county of Wyandott; that he is acquainted with the property known as the Jane Cook land and described as follows, to wit:

Beginning at the southwest corner of the northwest quarter of section numbered fifteen (15) in township numbered eleven south, of the base line of range number twenty-five (25) east, of the sixth principal meridian, running thence east forty (40) poles, running thence north two hundred and forty (240) poles to the center of the north line of the
116 southwest quarter of the southwest quarter of section number ten (10) in the township and range aforesaid, running thence west forty (40) poles to the northwest corner of the southwest quarter of the southwest quarter of said section number ten (10), running thence south two hundred and forty (240) poles to the place of beginning, containing sixty acres, and situated in the said county of Wyandott.

That he is also acquainted with the value of real property in the vi-

cinity of said tract, and that in his opinion said tract of land would not at the present time sell for more than sixty-five ($65.00) dollars per acre, or three thousand nine hundred dollars for the whole tract, and that according to ruling and selling prices is not worth more than that amount.

A. N. MOYER.

Subscribed in my presence and sworn to before me, the undersigned, a notary public within and the county of Wyandott, in the State of Kansas, this day of October, A. D. 1877.

In witness whereof I have hereunto set my hand and affixed my notarial seal the day and year last aforesaid.

[SEAL.] F. B. ANDERSON,
Notary Public.

(Endorsed:) No. 1928. The Northwestern Mut'l Life Insurance Co. vs. George P. Nelson, adm'r, &c., et al. Affidavit. Filed Oct. 9, 1877. A. S. Thomas, clerk.

117 And on this day, to wit, Oct. 9, 1877, there was filed in the clerk's office of said court the affidavit of F. B. Anderson in said entitled suit, which said affidavit is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District of Kansas, ss:

In the circuit court of the United States for the district of Kansas.

THE NORTHWESTERN MUTUAL LIFE INSURance Company, plaintiff,
vs.
GEORGE P. NELSON, AS ADMINISTRATOR OF the estate of William Cook, deceased, Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Nicholas McAlpine, Joseph Davis, The City of Wyandott, Wilson Shannon, and Nelson Cobb, defendants.

STATE OF KANSAS,
County of Wyandott:

F. B. Anderson, of lawful age, being first duly sworn, does on oath depose and say that he is a resident of the city of Wyandott, in the county of Wyandott, and State of Kansas; that he is city attorney of said city of Wyandott; that he is acquainted with the value of that tract of land known as the Jane Cook land, situate in the county of Wyandott and State of Kansas and more particularly described as follows, to wit:

Commencing at the southwest corner of the northwest quarter of section numbered fifteen (15) in township number eleven (11) south, of the base line of range number twenty-five (25) east, of the sixth principal meridian, in Kansas, running thence east forty (40) poles, running
118 thence north two hundred and forty (240) poles to the center of the north line of the southwest quarter of the southwest quarter of section number ten (10) in the township and range aforesaid, running thence west forty (40) poles to the northwest corner of the southwest quarter of the southwest quarter of said section number ten (10), running thence

south two hundred and forty (240) poles to the place of beginning, containing sixty acres.

Affiant also further deposes and says that he is acquainted with the value of real property in the vicinity of said lands, and that in his opinion said tract of land would not at the present time sell for more than fifty-five dollars per acre, or in the aggregate three thousand three hundred dollars.

F. B. ANDERSON.

Subscribed in my presence and sworn to before me, the undersigned, a notary public within and for the county of Wyandott, in said State of Kansas, this 5th day of October, 1877.

In witness whereof I have hereunto set my hand and affixed my notarial seal the day and year last aforesaid.

[SEAL.] M. B. NEWMAN,
Notary Public.

(Endorsed:) No. 1928. The Northwestern Mut'l Life Insurance Co. vs. George P. Nelson, adm'r, &c., et al. Affidavit. Filed Oct. 9, 1877. A. S. Thomas, clerk.

119 And on this day, to wit, Oct. 9, 1877, there was filed in the clerk's office of said court the affidavit of Ph. Knoblock in said entitled suit, which said affidavit is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District of Kansas, ss:

In the circuit court of the United States for the district of Kansas.

THE NORTHWESTERN MUTUAL LIFE INSURANCE Company, plaintiff,
vs.
GEORGE P. NELSON, AS ADMINISTRATOR OF THE estate of William Cook, deceased, Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Nicholas McAlpine, Joseph Davis, The City of Wyandotte, Wilson Shannon, and Nelson Cobb, defendants.

STATE OF KANSAS,
Wyandotte County, ss:

I, the undersigned, Ph. Knoblock, being first duly sworn, do on oath depose and say I reside in the city of Wyandotte, in the State of Kansas, and that I am acquainted with the value of the following described tracts of land, situate in the county of Wyandotte and State of Kansas, namely, that certain tract of land which is bounded as follows:

Beginning at the southwest corner of the northwest quarter of section number fifteen (15) in township number eleven (11) south, of the base line of range number twenty-five (25) east, of the sixth principal meridian, running thence east forty (40) poles, running thence
120 north two hundred and forty (240) poles to the center of the north line of the southwest quarter of section number ten (10) in the township and range aforesaid, running thence west forty (40) poles to the northwest corner of the southwest quarter of the southwest quarter of said section number ten (10), running thence south two hundred and forty poles to the place of beginning, containing sixty acres; and also

lots number seven (7), twelve (12), sixteen (16), seventeen (17), eighteen (18), nineteen (19), and twenty-two (22), in block number one hundred and thirty-two (132), in the city of Wyandotte, and lot number three (3), in block number one hundred and thirty-one (131) in the city of Wyandotte, all in the county of Wyandott, and State of Kansas, together with the privileges and appurtenances to the same belonging.

And affiant further deposes and says, that he is also acquainted with the value of real property in the vicinity of said tracts of land, and that in my opinion said tracts of land would not at the present time sell for more than $\$5{,}000\frac{00}{100}$, and that they are not altogether in the aggregate, according to ruling and selling prices, worth more than that amount.

PH. KNOBLOCK.

Subscribed in my presence and sworn to before the undersigned, a notary public within and for the county of Wyandotte, in the State of Kansas, this day of , A. D. 1877.

In witness whereof I hereunto set my hand and affix my notarial seal the day and year last aforesaid.

[SEAL.] F. B. ANDERSON,
Notary Public.

(Endorsed:) No. 1928. Northwestern Mut'l Life Ins. Co. vs. George P. Nelson, adm'r, &c., et al. Affidavit. Filed Oct. 9, 1877. A. S. Thomas, clerk.

121 And on this day, to wit, Oct. 9, 1877, there was filed in the clerk's office of said court the affidavit of B. Haurion in said entitled suit, which said affidavit is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District of Kansas, ss:

In the circuit court of the United States for the district of Kansas.

THE NORTHWESTERN MUTUAL LIFE INSURance Company, plaintiff,
vs.
GEORGE P. NELSON, AS ADMINISTRATOR OF THE estate of William Cook, deceased, Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Nicholas McAlpine, Joseph Davis, The City of Wyandott, Wilson Shannon, and Nelson Cobb, defendants.

STATE OF KANSAS,
County of Wyandott, ss:

B. Haurion, being first duly sworn, does on oath depose and say that he is a resident of the city of Wyandott, in the county of Wyandott and State of Kansas; that he is acquainted with the value of the following described tracts, pieces, and parcels of land situate in the county of Wyandott and State of Kansas, namely, that certain tract of land which is bounded as follows:

Beginning at the southwest corner of the northwest quarter of section number fifteen (15), in township number eleven (11) south, of the base line of range number twenty-five (25) east, of the sixth principal meridian, running thence east forty (40) poles, running thence north

122 two hundred and forty (240) poles to the center of the north line of the southwest quarter of the southwest quarter of section number ten (10), in the township and range aforesaid, running thence west forty (40) poles to the northwest corner of the southwest quarter of the southwest quarter of said section number ten (10), running thence south two hundred and (240) poles to the place of begnning, containing sixty acres; and also lots numbered seven (7), twelve (12), sixteen (16), seventeen (17), eighteen (18), nineteen (19), and twenty-two (22), in block number one hundred and thirty-two, in the city of Wyandott, and lot number three (3) in block number one hundred and thirty-one, in the city of Wyandott, all in the county of Wyandott, and State of Kansas, together with the privileges and appurtenances to the same belonging.

And affiant further deposes and says that he is also acquainted with the value of real property in the vicinity of said tracts, pieces and parcels of land, and that in his opinion said tracts of land would not at the present time sell for more than four thousand five hundred ($4,500.00) dollars, and that they are not altogether in the aggregate, according to ruling and selling prices, worth more than that amount.

B. HAURION.

Subscribed in my presence and sworn to before me, the undersigned, a notary public within and for the county of Wyandott in the State of Kansas, this 6th day of October, A. D. 1877.

[SEAL.] F. B. ANDERSON,
Notary Public.

(Endorsed:) No. 1928. The Northwestern Mut'l Life Insurance Co. vs. George P. Nelson, adm'r, &c., et al., Affidavit. Filed Oct. 9, 1877. A. S. Thomas, clerk.

123 And on this day, to wit, Oct. 9, 1877, there was filed in the clerk's office of said court the affidavits of S. A. Cobb, F. Speck, Joseph Handford, J. B. Scroggs, J. P. Faber, J. J. Keplinger, E. P. Bates, in said entitled suit, which said affidavits are in the words and figures following, to wit:

In the circuit court of the United States, dist. of Kansas.

NORTHWES. LIFE INS. CO.
vs.
GEO P. NELSON, JANE COOK, ET AL.

STATE OF KANSAS,
Wyandott County, ss:

S. A. Cobb, F. Speck, J. B. Scroggs, Joseph Handford, J. P. Faber, being duly sworn, depose and say that they are residents of Wyandotte County, Kansas; that they are acquainted with the value of real estate in Wyandotte County & City; that they know and are familiar with the location and value of the following lots and that they are of the cash value set opposite to each:

Lot No.	7,	in	bl'k	No.	132		$800 00
" "	12,	"	"	"	"		700
" "	16,	"	"	"	"		1,200
" "	17,	"	"	"	"		1,000
" "	18,	"	"	"	"		800
" "	19,	"	"	"	"		1,000
" "	22,	"	"	"	"		800
" "	3,	"	"	"	131		500
							$6,800

That said property is of a total cash value of six thousand eight hundred dollars.

STEPEN A. COBB.
FRED. SPECK.
JOSEPH HANDFORD.
J. P. FABER.
124 J. B. SCROGGS.
J. J. KEPLINGER.
E. P. BATES.

Subscribed in my presence and sworn to before me this 6th day of October, 1877.

[SEAL.] G. W. BETTS,
Clerk Dist. Court Wyandotte County.

(Endorsed:) No. 1928. Circuit court U. S., dist. of Kansas. N. W. Life Ins. Co. vs. Geo. P. Nelson et al. Affidavit. Filed Oct. 9, 1877. A. S. Thomas, clerk. Buchan.

125 And on this day, to wit, Oct. 9, 1877, there was filed in the clerk's office of said court the affidavits of L. H. Wood, F. D. Crane, E. S. W. Drought, Wm. Albright, W. H. Ryus, J. B. Sharp, J. A. Davies, G. W. Bishop, R. E. Cable, G. B. Wood, R. B. Armstrong, in said entitled suit, which said affidavits are in the words and figures following, to wit:

In the circuit of the United States, district of Kansas.

NORTHWESTERN LIFE INS. CO. }
vs. }
GEO. P. NELSON, JANE COOK. }

STATE OF KANSAS,
County of Wyandott, ss:

L. H. Wood, F. D. Crane, E. S. W. Drought, Wm. Albright, W. H. Ryus, J. B. Sharp, J. A. Davies, G. W. Bishop, R. E. Cable, G. B. Wood, being first duly sworn, depose and say that they are residents of Wyandott County, Kansas, and are well acquainted with the value of real estate in Wyandotte City; that they are well acquainted with the location of lots No. 7, 12, 16, 17, 18, 19, & 22, in block No. 132, also lot 3, in block 131; that said lots are situate on Minnesota avenue, the principal business street of said city, and are valuable and desirably located for business property; that the present cash value of said lots are as follows, to wit:

Lot 7, in block No. 132, cash value		$700 00
" 12, " " " " " "		$500 00
" 16, " " " " " "		$1,000 00
" 17, " " " " " "		$900 00
" 18, " " " " " "		$700 00
" 19, " " " " " "		$900 00
" 22, " " " " " "		$600 00
126 " 3, " " " " " "		$400 00
		$5,700 00

Being a total cash value of five thousand seven hundred dollars.

LUTHER H. WOOD.
F. D. CRANE.
E. S. W. DROUGHT.
WILLIAM ALBRIGHT.
W. H. RYUS.
J. B. SHARP.
J. A. DAVIES.
G. W. BISHOP.
R. E. CABLE.
GEORGE B. WOOD.
R. B. ARMSTRONG.

Subscribed in my presence and sworn to before me this 6th day of October, 1877.

[SEAL.]

G. W. BETTS,
Clerk of the Dist. Court, Wyandotte County.

(Endorsed:) No. 1928. Circuit court U. S., dist. of Kansas. N. W. Life Ins. Co. vs. Geo. P. Nelson et al. Affidavits. Filed Oct. 9, 1877. A. S. Thomas, clerk. Buchan.

127 And on this day, to wit, Oct. 9, 1877, there was filed in the clerk's office of said court the affidavits of R. B. Armstrong and M. B. Newman in said entitled suit, which said affidavits are in the words and figures following, to wit:

In the United States circuit court, dist. of Kansas.

THE NORTHWESTERN LIFE INS. CO. }
vs.
GEO. P. NELSON, JANE COOK, ET AL. }

STATE OF KANSAS,
County of Wyandott, ss:

R. B. Armstrong and M. B. Newman, being first duly sworn, depose and say that they are residents of the county of Wyandott and State of Kansas, and are acquainted with the value of real estate in this locality; that they are familiar with the location, condition, and surroundings of the following described real estate, to wit:

Beginning at the southwest corner of the northwest quarter of sec. 15, town. 11, range 25; thence east 40 poles; thence north 240 poles to the center of the north line of the northwest quarter sec. 10, town. 8, range aforesaid; thence west 40 poles to the northwest corner of the southwest quarter sec. 10; running thence south 240 poles to the beginning, containing 60 acres, known as the Jane Cook farm, and that the present cash value of said land is one hundred dollars per acre, being a total of six thousand dollars

And the said R. B. Armstrong, for himself, says that he is a member of the firm of Armstrong and Moyer, real estate agents of Wyandott City, and has been a dealer in real estate for many years.

128 And said M. B. Newman says, for himself, that he has for a number of years been a dealer in real estate and is acquainted with values hereabouts.

And deponents say that the above valuation is put upon said property in view of a depressed condition of real estate in the locality, and that said property has a perspective value much greater than that above stated.

R. B. ARMSTRONG.
M. B. NEWMAN.

Subscribed in my presence & sworn to before me the 8th day of October, 1877.

[SEAL.] F. B. ANDERSON,
Notary Public.

(Endorsed:) No. 1928. Circuit court U. S., dist. of Kansas. Affidavits. Filed Oct. 9, 1877. A. S. Thomas, clerk. Buchan.

129 And on this day, to wit, Oct. 9, 1877, there was filed in the clerk's office of said court the affidavits of J. J. Keplinger, Luther H. Wood, G. W. Bishop, J. A. Davies, Theodore Schultz, Madison Puett, C. H. Carpenter, J. B. Scroggs, F. D. Crane, Stephen A. Cobb, Fred Speck, George B. Wood, F. W. Patterson, and E. P. Bates, in said entitled suit, which said affidavits are in the words and figures following, to wit:

In the circuit court of the United States, district of Kansas.

THE NORTHWESTERN MUTUAL LIFE INS. CO., of Milwaukee, Wis.,
vs.
GEORGE P. NELSON, JANE COOK, ET AL.

STATE OF KANSAS,
County of Wyandott, ss:

J. J. Keplinger, Geo. Bishop, L. H. Wood, J. A. Davies, Theo. Schultz, C. H. Carpenter, Madison Puett, J. B. Scroggs, F. D. Crane, S. A. Cobb, Fred Speck, Geo. B. Wood, being first duly sworn according to law, depose and say that they are residents of the county & State aforesaid; that they are familiar with the value of real estate in this locality; that they are acquainted with the location, condition, surroundings, and value in cash of the following described property, to wit:

Beginning at the southwest corner of the northwest quarter of section 15, township 11, range south of the base line of range number 25 east of the 6th principal meridian; thence east 40 poles; thence north 240 poles to the center of the north line of the northwest quarter of sec. No. 10, town. & range aforesaid; thence west 40 poles to the northwest corner of the southwest quarter of southwest quarter of said section No. 10; running thence south 240 poles to the place of beginning,
130 containing 60 acres.

That said land is all good, cultivatable, and very choice land, lying about one-half within the limits of city of Wyandott, and nearly adjoining the town of Armstrong on the west, and is in a good state of cultivation and in a desirable locality; that said land is worth in cash at the present time one hundred dollars per acre exclusive of improvements, and that the improvements, consisting of buildings, orchard, and fencing, of the value of one thousand dollars, being the total cash value of seven thousand dollars; and said deponents further depose and say that they have made the above valuation in view of the fact and based therein, to wit, upon a depressed value of real estate in this locality for the past three years, and that in our judgment said property has an early prospective value very much in advance of the above figures; that from the location, condition, and surroundings of said land there can be no reasonable contingency of said land further depreciating in value, but, on the contrary, greatly advance.

And the said J. J. Keplinger says, for himself, that he has been a resi-

dent of said county for 12 years, has served 2 terms as county clerk, and has been assessor of real estate therein, and is well posted in values of land in said county.

And the said Geo. W. Bishop says, for himself, that he has for a long time been a dealer and trader in real estate, and is familiar with the price of property generally in said county.

And the said L. H. Wood says that he is a real estate agent in said county, and has large dealings in real estate in said county, and is familiar with the values thereof.

131, 132 And the said J. A. Davies says that he has been engaged in real estate transactions for a number of , and is well posted in values, being now a real estate agent.

And said E. P. Bates says that he has been a real estate agent for 17 years.

J. J. KEPLINGER,
LUTHER H. WOOD.
G. W. BISHOP.
J. A. DAVIES.
THEODORE SCHULTZ,
County Commissioner.
MADISON PUETT.
C. H. CARPENTER,
Wyandott T'p Trustee.
J. B. SCROGGS.
F. D. CRANE.
STEPHEN A. COBB.
FRED. SPECK.
GEORGE B. WOOD.
F. W. PATTERSON.
E. P. BATES.

Subscribed in my presence and sworn to before me this 6th day of October, 1877.

[SEAL.]

G. W. BETTS,
Clerk Dist. Court, Wyandott County.

(Endorsed:) No. 1928. Circuit court U. S., dist. of Kansas. N. W. Life Ins. Co. vs. G. P. Nelson et al. Affidavits. Filed Oct. 9, 1877. A. S. Thomas, clerk. Buchan.

133, 134 And on this day, to wit, Tuesday, October 9th, 1877, in the June, A. D. 1877, term of said court, in the record of the proceedings thereof in said entitled suit is the following entry, to wit:

Journal entry.

THE NORTHWESTERN MUTUAL LIFE INSURance Company, plaintiff,
vs.
GEORGE P. NELSON, AS ADMINISTRATOR OF THE estate of William Cook, deceased, Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Nicholas McAlpine, Joseph Davis, The City of Wyandotte, Wilson Shannon, and Nelson Cobb, defendants. } 1928.

And now, on this 9th day of October, A. D. 1877, comes the plaintiff

herein, by Clough & Wheat, its counsel, and also come defendants George P. Nelson, as administrator of the estate of William Cook, deceased, Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Joseph Davis, and The City of Wyandotte, by W. J. Buchan, esq., their counsel, and with their consent, now here given in open court, it is now by the court here ordered that the time in which testimony may be taken in this cause is hereby extended and enlarged to and until Thursday, the twenty-third day of November, A. D. 1877, without prejudice to a trial at the next term of this court.

C. G. FOSTER, *Judge.*

135 And on this day, to wit, November 15th, 1877, there was filed in the clerk's office of said court the depositions of Isaac B. Sharp, L. Cook, J. B. Scroggs, D. R. Churchill, E. L. Bartlett, John Gibson, and Jane Cook and others, taken by H. C. Hollester, examiner of said court, which said depositions, with exhibits thereto prefixed, are in the words and figures following, to wit:

EXHIBIT No. 1.

This indenture, made the tenth day of December, in the year of our Lord one thousand eight hundred and seventy-four, between William Cook and Jane Cook, his wife, of the city and county of Wyandotte and State of Kansas, parties of the first part, and the Northwestern Mutual Life Insurance Company, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of five thousand (5,000) dollars, to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said party of the second part, and to its successors and assigns, forever, the following real estate, lying and being in the county of Wyandott and State of Kansas, and known and described as follows, viz: Beginning at the southwest corner of the northwest quarter of section number fifteen (15), township number eleven (11) south, of range number twenty-five

136 (25) east; thence east forty (40) poles; thence north two hundred and forty (240) poles, to the centre of the north line of the southwest quarter of the southwest quarter of section number ten (10), township and range aforesaid; thence west forty (40) poles, to the northwest corner of the southwest quarter of the southwest quarter of said section number ten (10); thence south two hundred and forty (240) poles, to the place of beginning; containing sixty (60) acres. Also lots number seven (7), twelve (12), sixteen (16), seventeen (17), eighteen (18), nineteen (19), and twenty-two (22), in block number one hundred and thirty-two, and lot number three (3), in block number one hundred and thirty-one (131), in the city of Wyandott, in the county and State aforesaid.

Together with the privileges and appurtenances to the same belonging, and all the rents, issues, and profits which may arise or be had therefrom. To have and to hold the same to the said party of the second part, its successors and asigns, forever.

And the said William Cook, for himself, his heirs, executors, administrators, and assigns, covenants and agrees with the said party of the second part, its successors and assigns, to keep the building or buildings now standing, or which may hereafter be effected, on the above described premises insured against loss or damage by fire, in some solvent incorporated insurance company or companies to be approved by said

137 party of the second part, its successors or assigns, so lond as the moneys hereby secured shall be unpaid, to the amount of at least dollars, and to assign, and keep assigned to said party of the second part; and to pay annually to the proper officers all taxes and assessments which shall be levied or assessed on said real estate, or any part thereof; and to procure and deliver to the said party of the second part, at its office in the city of Milwaukee, in the State of Wisconsin, on or before the first day of May in each and every year, duplicate receipts of the proper officers for the payment of all such taxes and assessments levied or assessed on said premises for the preceding year; and in case of the failure to keep or continue such insurance, or to assign the policy or policies thereof, as above provided, or in case of the non-payment of any such taxes or assessments when the same shall become due and payable, the said party of the second part, its successors or assigns, may effect an insurance upon said building or buildings, to the amount above-named, and may pay such taxes and assessments, with the accrued interest, officers fees and expenses thereon, and the amounts or sums so paid for premiums and expenses of insurance, and for taxes or assessments and officers fees and expenses on account thereof, shall be immediately paid to the said party of the second part, its successors or assigns, and shall, unless so paid, be added to and be deemed part and parcel of the moneys secured hereby, and from the time of the payment thereof by the said party of the
138 second part, the sums so paid shall bear interest at the same rate as the principal debt hereby secured. And that the said parties of the first part, at the time of the ensealing and delivery of these presents, are the true, lawful, and rightful owners and proprietors of the said premises above described, and every part thereof, and are seized of a good, sure, perfect, and indefeasible estate of inheritance therein in fee simple; that they have good right, full power, and lawful authority to grant, bargain, sell, and convey the said premises, and every part thereof, to the said party of the second part, in manner and form aforesaid; that the said premises are free and clear from all taxes, liens, & incumbrances whatsoever; and that the said parties of the first part will ever warrant and defend the same to the party of the second part, its successors and assigns, against all claims whatsoever. Provided always that these presents are upon this express condition, that if William Cook, one of said parties of the first part, his heirs, executors, or administrators, shall pay, or cause to be paid, to the said party of the second part, its successors or assigns, the just and full sum of five thousand (5,000) dollars at the expiration of five (5) years from the date of these presents, with interest thereon until paid, at the rate of twelve per centum per annum, payable semi-annually on the first day of May and of November of each and every year; both principal
139 and interest payable at the office of said company in the city of Milwaukee, according to the condition of a bond bearing even date herewith, executed by William Cook, one of said parties of the first part, to the said party of the second part; and shall moreover keep such insurance as is above mentioned, and keep the policy or policies thereof assigned as aforesaid, and shall annually pay all taxes and assessments on said real estate, and procure and deliver the receipts therefor as aforesaid; then these presents and the said bond or writing obligatory shall cease, and be null and void.

But in case of the non-payment of any sum of money (either of principal, interest, insurance money, taxes, or assessments) at the time or times when the same shall become due, agreeably to the terms and con-

ditions of these presents, or of the aforesaid bond, or any part thereof, then, in such case, the whole amount of said principal sum shall, at the option of the said party of the second part, its successors or assigns, be deemed to have become due and payable, without any notice whatever (notice of such option being hereby expressly waived); and the same, together with all sums of money which may be paid by said party of the second part, its successors or assigns, for or on account of insurance, taxes, assessments, or prior liens, with interest thereon at the rate aforesaid, shall thereupon be collectable in a suit at law, or by foreclosure of this mortgage, in the same manner as if the whole of said principal sum had been made payable at the time
140 when any such failure in any payment shall occur as aforesaid, and the judgment or decree in the suit brought to foreclose the same shall embrace said principal debt and interest; all sums so paid for or on account of insurance, taxes, assessments, or prior liens, with interest at the rate aforesaid; and it shall be lawful in such case for the said party of the second part, its successors or assigns, to grant, sell, and convey the said real estate, with the appurtenances thereunto belonging, at public auction or vendue; and on such sale to make and execute to the purchaser or purchasers, his, her, or their heirs and assigns forever, good and sufficient deeds of conveyance in the law, pursuant to the statute in such case made and provided; and in case suit shall be brought for the foreclosure of this mortgage, the said parties of the first part, for themselves, their heirs, representatives, and assigns, covenant and agree that they will pay to the said party of the second part, its successors or assigns, all expenses incurred in procuring and continuing abstracts of title for the purposes of the foreclosure suit, and will pay, in addition to the taxable costs in such suit, an adequate and reasonable sum as a solicitor's or attorney's fee, the amount thereof to be fixed by the court and to be included, with the expenses for abstracts above mentioned, in the judgment or decree.

The said parties of the first part hereby covenant and agree to perform the covenants and conditions of this mortgage, without any
141 relief from any valuation or appraisement laws, and hereby expressly waive appraisements, and waive and release all rights and benefits they have in said premises as a homestead, under any act relating to the alienation and exemption of homesteads.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

WILLIAM COOK. [SEAL.]
JANE COOK. [SEAL.]

Signed, sealed and delivered in presence of—
JOHN GIBSON,
ALISON CROCKETT.

STATE OF KANSAS,
Wyandott County, ss:

Be it remembered that on this 19th day of December, A. D. 1874, before the undersigned, Alison Crockett, register of deeds in and for the county and State aforesaid, duly commissioned and qualified, personally came William Cook and Jane Cook, his wife, who are personally known to me to be the same persons who executed the foregoing instrument of writing as grantors, and as such persons duly and severally acknowledged the execution of the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year last written.

[SEAL.] ALISON CROCKETT,
Register of Deeds, Wyandott County, State of Kansas.

142 (Endorsed:) 2851. William Cook & wf. to The Northwestern Mutual Life Insurance Company. Mortgage. Dated the 10th day of Dec., 1874.

STATE OF KANSAS,
County of Wyandott, ss:

Received for record on the 29th day of December, A. D. 1874, at 10½ o'clock, a. m. and recorded in volume W of Mortgages on pages 353, 354, 355, and 356.

ALISON CROCKETT,
Register of Deeds.

Fees $. Paid.

143 EXHIBIT NO. 2.

Know all men by these presents, that I, William Cook, of the city and county of Wyandotte, and State of Kansas, am held and firmly bound unto the Northwestern Mutual Life Insurance Company, in the sum of ten thousand (10,000) dollars lawful money of the United States of America, to be paid to the said The Northwestern Mutual Life Insurance Company, or to its certain attorneys, successors or assigns, to which payment well and truly to be made I bind myself, my heirs, executors and administrators, and each and every of them, firmly by these presents. Sealed with my seal and dated the tenth day of December in the year of our Lord one thousand eight hundred and seventy-four.

The condition of this obligation is such that, if the above bounden William Cook, his heirs, executors, administrators, or any of them, shall well and truly pay or cause to be paid unto the above mentioned the Northwestern Mutual Life Insurance Company, or to its certain attorneys, successors, or assigns, the just and full sum of five thousand (5,000) dollars at the expiration of five (5) years from the date of these presents, with interest thereon until paid at the rate of twelve per centum per annum, payable semi-annually on the first day of May and of November in each and every year, both principal and interest payable at the office of said company, in the city of Milwaukee, in the State of Wisconsin, and shall moreover well and truly keep and perform the cov-

144 enants and agreements pertaining to insurance, taxes and assessments, contained in a certain mortgage of even date herewith, executed by the said William Cook and Jane Cook, his wife, to the said The Northwestern Mutual Life Insurance Company, but in case of the non-payment of any sum of money either of the said principal sum or interest thereon, or any insurance money, taxes, or assessments at the time or times when the same shall become due or payable agreeably to the terms and conditions of these presents, or of the said mortgage, then in such case the whole amount of said principal sum shall, at the option of the said The Northwestern Mutual Life Insurance Company, its successors, or assigns, be deemed to have become due and payable, withoutany notice whatever (notice of such option being hereby expressly waived); and the same together with all sums or money which may be paid by said The Northwestern Mutual Life Insurance Company, its successors, or

assigns, for or on account of insurance, taxes, assessments, or prior liens, with interest thereon at the rate aforesaid, shall thereupon be collectable in a suit at law, or by a foreclosure of the said mortgage in the same manner as if the whole of the said principal sum had been made payable at the time when any such failure in any payment shall occur as aforesaid. Provided, however, that if the said William Cook, his heirs, executors or administrators, shall pay the whole principal sum
145 above mentioned, and interest thereon as aforesaid, and all sums, if any, which the said The Northwestern Mutual Life Insurance Company, its successors, or assigns, shall have paid for insurance, taxes, assessments, or prior liens, with interest thereon as aforesaid, according to the terms and conditions of these presents, and of the said mortgage, without any fraud or other delay, then this obligation to be void and of no effect, otherwise to remain in full force and virtue.

The said William Cook hereby agrees to pay said sums and to perform the conditions of this bond without any relief from any valuation or appraisement laws, and hereby expressly waive appraisement, and waive and release all right and benefits they have in said premises as a homestead under any act relating to the alienation and exemption of homesteads.

No payment of the principal of this bond shall be deemed valid except upon the joint receipt of the president and secretary of the said company.

WILLIAM COOK. [SEAL.]

Sealed and delivered in presence of—

146 (Indorsed:) No. 2851. William Cook to The Northwestern Mutual Life Insurance Company. Bond, dated the 10th day of Dec., 1874.

Date.	Payments of interest.	Amount.
April 28, 1875	Received int. to May 1st, 1875	171 23
Nov. 1, 1875	" " " Nov. 1st, 1875	250 00
	(In pencil)	421 23

147 EXHIBIT No. 3.

[The National Exchange Bank, Wisconsin.]

$4,781.65.] THE NATIONAL EXCHANGE BANK,
Milwaukee, Dec. 26, 1874.

This first of exchange, second unpaid. Pay to the order of William Cook and Jane Cook, forty-seven hundred eighty-one $\frac{65}{100}$ dollars.
$4,781.65.

(Erased:) W. G. FITCH,
Cashier.

To the Mercantile National Bank, New York.
Paid.
No. 57707.

[Two cent. int. revenue stamp, 29, Jan. 4, 1875, cancelled.]

(Across the face:)
Entered. J. H. P. WINSLOW,
Teller.

148 (Indorsed:)
Wm. Cook.
Jane Cook.

Pay Donnell, Lawson & Co., or order, for collection account of The Watkins Bank, Kansas City, Mo.

D. STREET,
A. Cashier.

For deposit in National Bank of the Republic.
DONNELL, LAWSON & CO.

149, 150 EXHIBIT No. 4.

Northwestern Mutual Life Insurance Co., Wm. Booth, State agent for Kansas, cor. 5th and Delaware st's, Leavenworth.]

WYANDOTT, *Dec.* 18, 1874.

H. L. PALMER, Esq.,
President:

D'R SIR: Please retain out of my loan from this co. the am't of my annual prem. on my life policy, & oblige,

WILLIAM COOK.

(Indorsed:) Exhibit No. 4.

151, 152 EXHIBIT No. 5.

WYANDOTTE, *Dec.* 19, '74.

WM. BOOTH, Esq'r:

Papers sent this day by express.
Yours, &c.,

WM. COOK.

153, 154 EXHIBIT No. 6.

WYANDOTTE, KANSAS,
Dec. 9th, 1874.

WM. BOOTH, Esq.,
Ag't Mutual Life Ins. Co.:

SIR: Circular from your company received. I want to accept, and request the loan. Anything further you wish please inform me.
Respectfully,

WM. COOK.

155, 156 EXHIBIT No. 7.

WYANDOTT, *July 6th*, '74.

Mr. WM. BOOTH:

DEAR SIR: I think you will find everything correct according to your instructions. I wish you could be able to arrange matters so that I can get the money by the 15th.
Yours, &c.,

WM. COOK.

(Endorsed:) Wm. Cook, July 6, '74.

157, 158 EXHIBIT No. 11.

[Northwestern Mutual Life Insurance Co., Wm. Booth, State agent for Kansas, cor. 5th and Delaware st's, Leavenworth.]

AGENCY AT LEAVENWORTH,
Dec. 31*st*, 1874.

WILLIAM COOK, Esq.,
Wyandott:

DEAR SIR: Enclosed find your life ins. policy for $5,000, No. # 80206. Premium paid.

Yours, truly,

WM. BOOTH,
P'r A. F.

159 EXHIBIT No. 10.

UNITED STATES OF AMERICA,
District of Kansas, ss:

In the circuit court of the United States for the district of Kansas.

THE NORTHWESTERN MUTUAL LIFE-INSURance Company, plaintiff,
vs.
GEORGE P. NELSON, AS ADMINISTRATOR OF THE estate of William Cook, deceased, Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Nicholas McAlpine, Joseph Davis, The City of Wyandotte, Wilson Shannon, and Nelson Cobb, defendants.

For the purpose of avoiding the necessity and expense of other proof thereof, it is hereby mutually admitted and agreed as evidence and admissions to be used at each and every trial and at each and every hearing of this the above-entitled suit that the William Cook mentioned in the bill of complaint in said suit of the above-named plaintiff, The Northwestern Mutual Life-Insurance Company, died intestate on the fourth day of September, A. D. 1876, leaving no child nor any descendant surviving him, but *and* he left the above-named Jane Cook, to whom he had before then been married, his wife, now his widow, his sole heir, surviving him, and since then and heretofore, to wit, on the 22nd day of September, A. D. 1876, the above-named George P. Nelson
160 was, in and by the probate court in and for the county of Wyandotte, in the State of Kansas, duly appointed administrator of all and singular the goods and chattels, rights and credits, which were of the said William Cook at the time of his death, and said Nelson then duly qualified and gave bond as such administrator, and has ever since been administrator of the estate of said William Cook, deceased.

And that heretofore, to wit, on the 23rd day of September, A. D. 1875, the lots number seven, twelve, sixteen, seventeen, eighteen, nineteen, and twenty-two in block number one hundred and thirty-two, in the city of Wyandotte, in the county of Wyandotte, in the State of Kansas, in the aforesaid bill mentioned, were duly sold by the county treasurer of said county of Wyandotte for and because of the non-payment of certain taxes and assessments duly levied and assessed thereon in A. D. 1874,

all which taxes and assessments became and were due long before September, A. D. 1875, and certain other taxes and assessments were duly levied and assessed thereon, that is, on said lots in said block one hundred and thirty-two, during A. D. 1875, which became and was all due before the 13th day of November, A. D. 1876, and on that last-named day said plaintiff duly redeemed said lots in said block number one hundred and thirty-two from the aforesaid sales so made in September, A. D. 1875, as aforesaid, at a necessary cost and expense of $948\frac{72}{100}$, that being the then amount, taxes, interest, and charges thereon, re-
161 quired and necessary to be paid to redeem the same, and *and* said plaintiff then paid that sum to the county treasurer of said county of Wyandotte to redeem said lots from said tax sale thereof. Nine hundred and forty-six and $\frac{02}{100}$ dollars of said nine hundred and forty-eight and $\frac{72}{100}$ dollars is and was taxes and assessments, some levied and assessed in A. D. 1874, some thereof levied and assessed in A. D. 1875, and penalties and interest thereon against and upon said lots, and the remaining two and $\frac{70}{100}$ dollars thereof is and was cost of redemption.

And on the fifth day of September, A. D. 1876, the lot number three in the bill aforesaid mentioned, that is, the lot number three in block number one hundred and thirty-one, in the city of Wyandotte aforesaid, was, by the county treasurer of said county of Wyandotte, duly sold for and because of the nonpayment of certain taxes and assessments duly levied and assessed thereon in A. D. 1875, and on the 13th day of November, A. D. 1876, said plaintiff duly redeemed said lot number three from the last-mentioned sale thereof by then paying to said county treasurer of said county of Wyandotte the sum of twenty-seven and $\frac{10}{100}$ dollars, that being the amount and sum then necessary and required to redeem the same lot three from said tax sale thereof. Twenty-six and $\frac{60}{100}$ dollars of said twenty-seven and $\frac{10}{100}$ dollars is and was taxes and penalties and interest thereon against and upon said lot number
162 three, and the remaining fifty cents of said twenty-seven and $\frac{10}{100}$ dollars is and was cost of redemption, which taxes and assessments became and were due before September, A. D. 1876.

And divers taxes were duly levied and assessed on each of the several tracts of land in the aforesaid bill described, in and during the year A. D. 1876, which last-mentioned taxes came due in December, A. D. 1876, and on the 22nd day of May, A. D. 1877, the last-mentioned taxes with and including the penalties thereon amounted to the sum of five hundred and sixty four and $\frac{62}{100}$ dollars, and then and on said 22nd day of May, A. D. 187[illegible], said plaintiff paid the last-mentioned taxes, and so to do paid that sum of five hundred and sixty-four and $\frac{65}{100}$ dollars to said county treasurer of said county of Wyandotte, all which taxes had before then been long over-due, and one hundred and two and $\frac{42}{100}$ dollars of the last-mentioned taxes was taxes on and against the first tract of land in said bill described.

Wyandotte, Ks., Aug. 28th, '77.

M. J. BUCHAN,

Counsel & Att'y for Jane Cook and all other Def'ts who have answered in this action, that is, for Geo. P. Nelson, City of Wyandotte, Jno. Gibson, Philip Kaiser, Lucretia Riley, Chas. W. Twist, & Jos. Davis, Def'ts.

CLOUGH & WHEAT,

Counsel and Solicitors for Plaintiff.

(Endorsed:) No. 1928. The Northwestern Mutual Life-Insurance Company vs. George P. Nelson, adm'r, &c., et al. Admissions, &c., as evidence.

163 EXHIBIT No. 9.

To the executive committee of the Northwestern Mutual Life Insurance Company:

GENTLEMEN: I desire to obtain from your company a loan of six thousand $\frac{00}{100}$ dollars, for five years from July 6th, 1874, upon bond and mortgage of the property herein mentioned, situated in the city and in the county of Wyandott, and State of Kansas, the exact position of which is marked on the accompanying diagram, and which is described in the recorded deeds of conveyance as follows, to wit: Lots seven (7), sixteen (16), seventeen (17), eighteen (18), nineteen (19), twelve (12), and twenty-two (22), in block one hundred and thirty-two (132), and lot three (3) in block one hundred and thirty-one (131), in Wyandott City, Wyandott County, Kansas. Also, beginning at the southwest corner of the northwest quarter of section 15, township 11 south, range 25 east, thence east forty (40) poles, thence north 240 poles to the centre of the north line of the southwest quarter of the southwest quarter of sec. 10, township 11, range 25 east, thence west 40 poles to the northwest corner of southwest quarter of the southwest quarter of said section ten, thence south 240 poles to the beginning, in Wyandott County, Kansas.

BUILDINGS.

Describe them, stating when built, their size, and whether of stone, brick or wood, and for what purpose they are now used.

Buildings not included by directions of Wm. Booth, gen'l ag't.

Cash value of the real estate without the buildings.....	$19,000 00
Cash value of the buildings.....	$6,900 00
Total	$25,900 00

The answers to the following questions are given by the subscriber, and are full and correct:

CITY.

(If the property is in the country these questions need not be answered.)

What is the size of the lot, front, depth, &c.? All 25 x 123 feet.

On what street, and between what two streets is its frontage? Minnesota av., Wyandott, K's, between 4th & 5th sts.

What is the value of the ground per front foot? About $40 for lots.

What is the population of the city? 64,500.

What is the acknowledged indebtedness of the city? $750,000.

What is the contingent indebtedness of the city? All included in above.

What is the assessed value of the city? $900,000 (nine hundred thousand dollars).

COUNTRY.

(If the property is in the city these questions need not be answered.)

What is the distance to the nearest town, and name and size of town?

Adjoins town of Armstrong with 300 inhabitants, adjoins Wyandott, 4,500 inhabitants, 1 mile from K'n's City, Mo., with 45,000 inhabitants.

What is the distance to railroad, and name of railroad? Adjoins K. P. R. W.

What is the number of acres? Sixty.

How many acres under fenced and how fenced? All under fence, picket and rail.

How many acres are under cultivation? All cultivated except what is plotted, about fourteen acres, as add'n to Armstrong, K's.

What is the character of the land not cultivated? High, good, cultivatable land.

How many acres are low, and is any of it wet and marshy at any season of the year? (State particulars.)

What is the cash value of the land per acre? One hundred and seventy-five dollars.

164 By whom and for what is the property and buildings occupied or used? By applicant. Lots for business purposes, and acres for farm.

What is the annual rental? Lots bring $199.00, & farm brings $600.00, being in all $2,988.00.

On what portion of the premises are the buildings situated? On north end of farm, with orchard, 8 acres. Buildings on all the lots except 12 in bl'k 132.

For what amount are the buildings insured, and in what company? None insured.

Is any building in process of erection on these premises, or contracted for? No.

Are there any mortgages, judgments, liens, or other incumbrances on this property? If so, give dates, to whom, and for what amounts? Mortgage on lots 7, 16, 17, 18, 19, & 22 in bl'k 132, to Kansas Valley Building and Loan Ass'n, dated Oct. 13, 1873, for $2,000.00. (The mortgage to be paid and discharged with proceeds of present loan.)

In whom is the recorded title, and is it perfect of record? William Cook and Jane Cook. Yes.

What is the assessed value of this property for taxation as per last assessment roll? $1,500 per lot, & land $100 per acre.

What is the amount of the last annual tax on said assessment? On lots, $480; on land, $240.00.

What is the acknowledged indebtedness of the county proper? $150,000.

What is the contingent indebtedness of the county proper? Included in above.

What is the assessed value of the county proper? Three million dollars.

What is the acknowledged indebtedness of the township proper? $5,000.

What is the contingent indebtedness of the township proper? Included above.

What is the assessed value of the township proper? $175,000.00.

Are you married? If so, state wife's name in full. Jane Cook.

What is your post-office address? Wyandott, Kansas.

What is your business or occupation? Capitalist.

Is your life insured in this company at this date? It is not.

It is understood in making this application that no commissions for procuring or facilitating loans from this company are allowed to any one, but that the necessary expenses including the charges of counsel

for examining title and preparing the securities (not exceeding the usual charges for similar services) are to be paid by the borrower. Also that a complete and acceptable abstract and such other evidences of title as may be necessary, are to be furnished by the borrower at his expense.

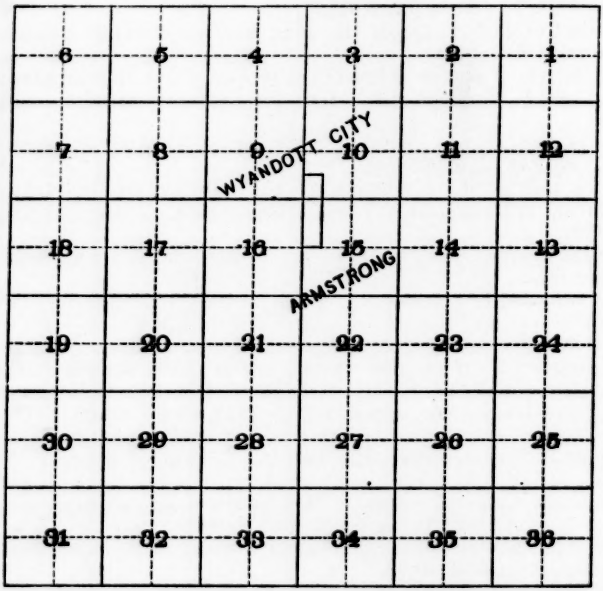
Dated July 3d, 1877.

(Name in full.)

(Signed) WILLIAM COOK.

COUNTRY PROPERTY.

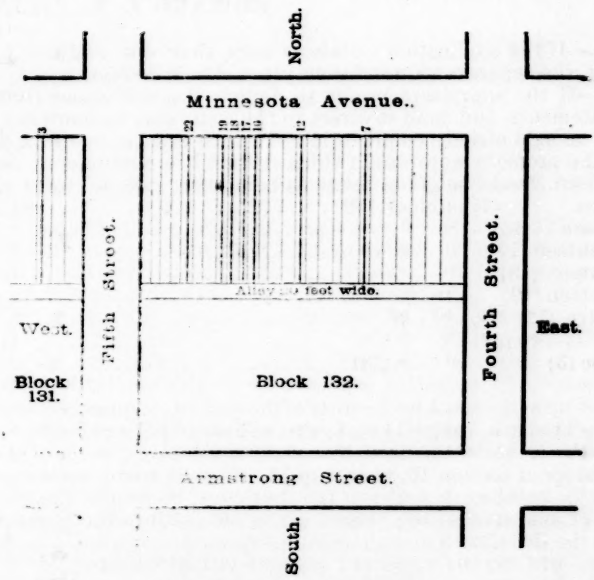
Mark location on this diagram.



Township No. eleven S., range No. 25 E.

CITY PROPERTY.

Mark location on this diagram.



165 APPRAISAL OF PROPERTY.

To the executive committee of the Northwestern Mutual Life Insurance Company:

GENTLEMEN: We the undersigned hereby certify that we are well acquainted with the value of real property in the city and county of Wyandotte, Kans., that we have carefully appraised the real estate described in the foregoing application and that in our judgment the cash market value
Insert "in the foregoing application" or "herewith below" as the case may be.
of the ground, exclusive of buildings, is eighteen thousand five hundred
(Insert the amount in words)
and five dollars ($18,500.00), making a total value of eighteen thousand five hundred and five dollars ($18,500.00).

We also state that the condition of the property is truly set forth by the applicant in his accompanying statements, that his answers to the questions contained therein are true as we verily believe, and the property is so situated with reference to the best position for business in that
Business, residence, or farming.)
locality; that it will not be likely to depreciate in value in the future.
(Insert will or will not.)

We, too, are well acquainted with the credit, reliability, and business promptness of William Cook, who proposes to get a loan from your company of $6,000.00 on the property herewith appraised, and state that his or their credit is good and we believe that he will pay the interest
His or their (Insert "good, fair or poor" as may be true.) (He or they.)
promptly and that the loan is a desirable one for the company to make
Insert "promptly, leisurely or slowly," as may be most probable Insert "desirable, tolerable, or poor."
and that it would be so regarded by the people generally.

In testimony whereof we have hereunto set our hands, at Wyandotte, Kansas, this third day of July, 1874.

166

BYRON JUDD,
LUTHER H. WOOD,
EDWARD L. BARTLETT.

NOTE.—If the application embraces more than one distinct piece of property, the separate value of each piece should be shown.

N. B.—If the appraisers prefer to detach the half sheet containing their statements and mail it direct to the company, its contents will, if desired, be held strictly confidential. In such case, however, a description of the property appraised (which it would be well to copy from the application) should be given below as being that referred to by them.

Lot seven	(7)	in	block	132	$1,000 00
" sixteen	(16)	"	"	"	1,200 00
" seventeen	(17)	"	"	"	1,000 00
" eighteen	(18)	"	"	"	1,000 00
" nineteen	(19)	"	"	"	1,000 00
" twelve	(12)	"	"	"	1,200 00
" twenty-two	(22)	"	"	"	1,000 00
" three	(3)	"	"	131	600 00

Beginning at the southwest corner of the northwest quarter of section 15, township 11 south, range 25 east; thence east 40 poles; thence north 240 poles to the center of the north line of the southwest quarter of the southwest quarter of section 10, township 11, range 25 east; thence west 40 poles to the northwest corner of the southwest quarter of the southwest quarter of said section 10; thence south 240 poles to the beginning, including the dwelling house thereon, being sixty acres in all, at $175 per per acre—$10,500.00; value of lots, 8,000.00—$18,500.00.

167

EXHIBIT No. 8.

No. 1.

To the executive committee of the Northwestern Mutual Life Insurance Company.

GENTLEMEN: I desire to obtain from your company a loan of five thousand dollars ($5,000) for five years from July 15, 1874, upon bond and mortgage of the property herein mentioned, situated in the city and in the county of Wyandott, and State of Kansas, the exact position of which is marked on the accompanying diagram, and which is described in the recorded deeds of conveyance as follows, to wit: Lots seven (7), sixteen (16), seventeen (17), eighteen (18), nineteen (19), twelve (12), and twenty-two (22), in block one hundred and thirty-two (132), and lot three (3) in block one hundred and thirty one (131), in the city of Wyandott, Kansas.

BUILDINGS.

Describe them, stating when built, their size, and whether of stone, brick, or wood, and for what purpose they are now used.

Buildings not described by direction of Wm. Booth, agt.

Cash value of the real estate without the buildings..... $8,000 00
Cash value of the buildings..... .....
Total.... ..... $8,000 00

The answers to the following questions are given by the subscriber and are full and correct.

CITY.

(If the property is in the country, these questions need not be answered.)

What is the size of the lot, front, depth, &c.? All 25 × 123 feet.

On what street, and between what two streets is its frontage? On Minnesota ave., between 4th & 5th sts., & one lot 3 in 131 between 5th & 6th sts., 2 lots from cor. of 5th.

What is the value of the ground per front foot? About forty dollars ($40.00).

What is the population of the city? Forty-five hundred.

What is the acknowledged indebtedness of the city? Seventy-five thousand dollars.

What is the contingent indebtedness of the city? Included in above.

What is the assessed value of the city? One million of dollars for year 1874.

168 By whom and for what is the property and buildings occupied or used? Buildings on seven of the lots, one vacant, occupied by tenants for various businesses; all occupied but one.

What is the annual rental? Twenty-three hundred dollars.

On what portion of the premises are the buildings situated? On the front part of the lots.

For what amount are the buildings insured, and in what company? None insured.

Is any building in process of erection on these premises, or contracted for? None.

Are there any mortgages, judgments, liens or other incumbrances on this property? There is a mortgage upon lots 7, 16, 17, 18, 19, & 22, in block 132, to the Kansas Valley Building and Loan Ass'n for $2,000, dated Oct. 13th, 1873. (This mortgage to be paid and discharged with the proceeds of present loan.) No other liens or incumbrances.

In whom is the recorded title, and is it perfect of record? Yes, William Cook and Jane Cook (his wife).

What is the assessed value of this property for taxation, as per last assessment roll? Fifteen hundred dollars per lot, or $12,000 in all.

What is the amount of the last annual tax on said assessment? $480.00.

What is the acknowledged indebtedness of the county proper? $150,000.

What is the contingent indebtedness of the county proper? Included in above.

What is the assessed value of the county proper? Three millions.

What is the acknowledged indebtedness of the township proper? $75 000. (Wyandott City t'w'p.)

What is the contingent indebtedness of the township proper? Included above.

What is the assessed value of the township proper? One million (for Wyandott City tp).

Are you married? If so, state wife's name in full. Yes; Jane Cook.

What is your post-office address? Wyandott, Kansas.

What is your business or occupation? Capitalist.

Is your life insured in this company at this date? It is not.

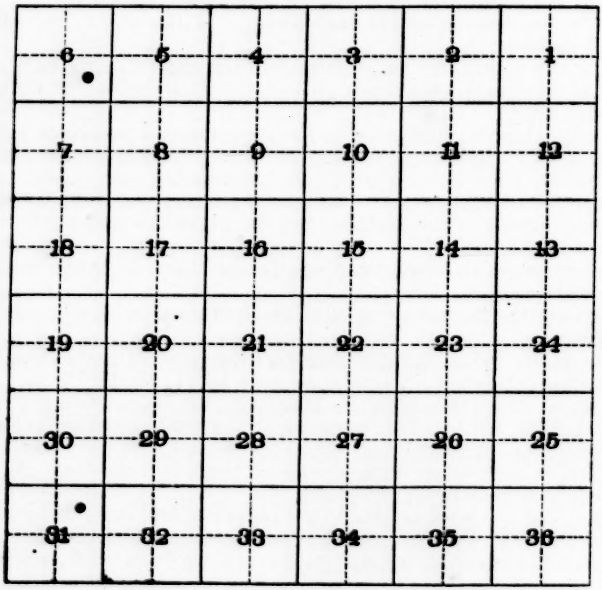
It is understood in making this application that no commissions for procuring or facilitating loans from this company are allowed to any one, but that the necessary expenses, including the charges of counsel for examining title and preparing the securities (not exceeding the usual charges for similar services) are to be paid by the borrower. Also that a complete and acceptable abstract and such other evidences of title as may be necessary are to be furnished by the borrower at his expense.

Dated July 7th, 1874.

(Signed) WILLIAM COOK.

COUNTRY PROPERTY.

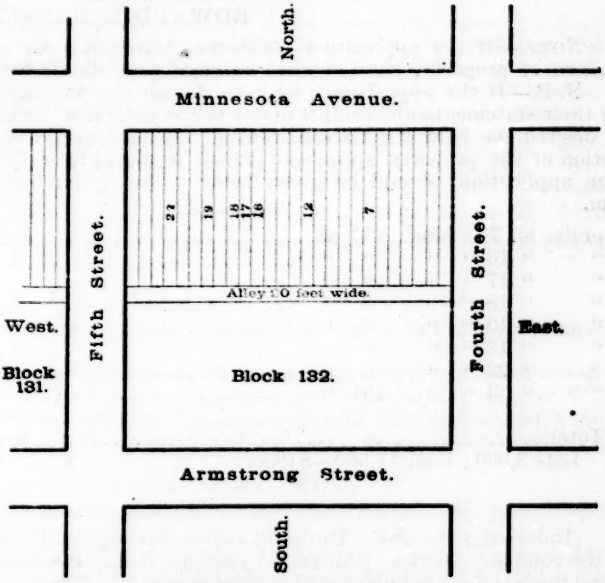
Mark location on this diagram.



Township No. , Range No.

CITY PROPERTY.

Mark location on this diagram.



169 APPRAISAL OF PROPERTY.

To the executive committee of the Northwestern Mutual Life Insurance Company:

GENTLEMEN: We, the undersigned, hereby certify that we are well acquainted with the value of real property in the city of Wyandott, Kans., that we have carefully appraised the real estate described the foregoing application, and that in our judgment the cash market value of the (Insert "in the foregoing application" or "herewith below," as the case may be.) ground, exclusive of the buildings, is eight thousand dollars ($8,000.00), (Insert the amount in words.) and that the cash value of the buildings is not assessed dollars ($), making a total value of dollars ($8,000).

We also state that the condition of the property is truly set forth by the applicant in his accompanying statement; that his answer to the questions contained therein are true, as we verily believe, and that the property is so situated with reference to the best position for business (business residence or farming) in that locality, that it will not be likely to depreciate in value in the (insert will or will not) future.

We, too, are well acquainted with the credit, reliability and business promptness of William Cook, who proposes to get a loan from your company of $5,000.00 on the property herewith appraised, and state that his credit is good; and we believe that he will pay the interest (his or their (insert good, fair or poor, as may be true) (he or they) promptly, and that the loan is a desirable one for the company to make, (insert "promptly, leisurely or slowly," as may be most probable.) (Insert "desirable, tolerable or poor.") and that it would be so regarded by the people generally.

In testimony whereof we have hereunto set our hands, at Wyandott, Kans., this seventh day of July, 1874.

LUTHER H. WOOD.
BYRON JUDD.
EDWARD L. BARTLETT.

NOTE.—If the application embraces more than one distinct
170 piece of property, the separate value of each should be shown.

N. B.—If the appraisers prefer to detach the half sheet containing their statements and mail it direct to the company, its contents will, if desired, be held strictly confidential. In such case, however, a description of the property appraised (which it would be well to copy from the application) should be given below as being that referred to by them.

We appraise	lot	7	in block	132	at			$1,000 00
"	"	" 16	"	"	"	"		1,200 00
"	"	" 17	"	"	"	"		1,000 00
"	"	" 18	"	"	"	"		1,000 00
"	"	" 19	"	"	"	"		1,000 00
"	"	" 12	"	"	"	"		1,200 00
"	"	" 22	"	"	"	"		1,000 00
"	"	" 3	"	"	131	"		600 00
Total								$8,000 00

Lots 8,000; land 11,500—$19500.

171

172 (Indorsed:) No. 2851. The blanks upon this page will be filled by the company. Cook, William, Wyandott, Kan. Application for loan from the Northwestern Mutual Life Insurance Co. Amount $5,000; time 5 years; when wanted . Property 8 lots (25 x 123 each), in Wyandott, Kans., & 60 ac' & buildings in Wyandott County. Referee's valuation of land $18,500; referee's valuation of buildings $1,000—$19,500; insurance on buildings, $. Voted.

173 No. 2.

To the executive committee of the Northwestern Mutual Life Insurance Company:

GENTLEMEN: I desire to obtain from your company a loan of five thousand ($5,000) dollars, for five years, from July 10th, 1874, upon bond and mortgage of the property herein mentioned, situated in Wyandott T'w'p, in the county of Wyandott and State of Kansas, the exact position of which is marked on the accompanying diagram, and which is described in the recorded deeds of conveyance, as follows, to wit: Beginning at the southwest corner of the northwest quarter of section 15, township eleven south, range 25 east, thence east 40 poles, thence north two hundred and forty (240) poles to the center of the north line of the southwest quarter of the southwest quarter of sec. 10, T. 11 S, R. 25 East, thence west forty (40) poles to the northwest corner of the southwest quarter of the southwest quarter of said section 10, thence south two hundred & forty (240) poles to the beginning.

BUILDINGS.

Describe them, stating when built, their size, and whether of stone, brick or wood, and for what purpose they are now used.

Built of wood, stone cellar, seven rooms & kitchen, 2 stories high above cellar, dwelling-house 32 x 20 feet, frame kitchen in rear, main building built 1864, kitchen & cistern built 1873, all in good repair, freshly painted inside and out last year, 1873; barn and outbuildings built of logs and old. Intend to erect a new barn next year.

Cash value of the real estate without the buildings.....	$10,500 00
Cash value of the buildings.....	$1,000 00
Total.....	$11,500 00

The answers to the following questions are given by the subscriber, and are full and correct.

COUNTRY.

(If the property is in the city these questions *do* need not be answered.)

What is the distance to the nearest town, and name and size of town? Adjoins town of Armstrong with 300 inhabitants; adjoins Wyandott with 4,500 inhabitants, 1 mile from Kansas City with 45,000 inhabitants.

What is the distance to railroad, and name of railroad? Adjoins K. P. R. W.

What is the number of acres? Sixty.

How many acres under fence, and how fenced? All under fence, picket & rail.

How many acres are under cultivation? All cultivated except 14 acres off the south end, which is plotted & laid out into an addition to Armstrong, but not yet recorded or filed.

What is the character of the land not cultivated? High, good cultivatable land.

What is the cash value of the land per acre? One hundred and seventy-five dollars.

174 By whom and for what is the property and buildings occupied or used? By applicant for a farm occupied by tenant. And what is the annual rental? ($600) six hundred dollars.

On what portion of the premises are the buildings situated? On north end with bearing orchard of eight acres.

For what amount are the buildings insured, and in what company? Not insured.

Is any building in process of erection on these premises, or contracted for? No. (State particulars.)

Are there any mortgages, judgments, liens or other incumbrances on this property? None whatever.

In whom is the recorded title, and is it perfect of record? Jane Cook, wife of William Cook, title perfect.

What is the assessed value of this property for taxation, as per last assessment roll? Six thousand dollars.

What is the amount of the last annual tax on said assessment? Two hundred & fifty dollars.

What is the acknowledged indebtedness of the county proper? One hundred and fifty thousand dollars.

What is the contingent indebtedness of the county proper? Included in above.

What is the assessed value of the county proper? Three million dollars.

What is the acknowledged indebtedness of the township proper? Five thousand dollars.

What is the contingent indebtedness of the township proper? Included in above.

What is the assessed value of the township proper? One hundred & seventy-five thousand dollars.

Are you married? If so, state wife's name in full. Yes; Jane Cook.

What is your post-office address? Wyandott, Kansas.

What is your business or occupation? Capitalist.

Is your life insured in this company at this date? It is not.

It is understood in making this application that no commissions for procuring or facilitating loans from this company are allowed to any one, but that the necessary expenses, including the charges of counsel for examining title and preparing the securities (not exceeding the usual charges for similar services), are to be paid by the borrower. Also that a complete and acceptable abstract and such other evidences of title as may be necessary are to be furnished by the borrower at his expense.

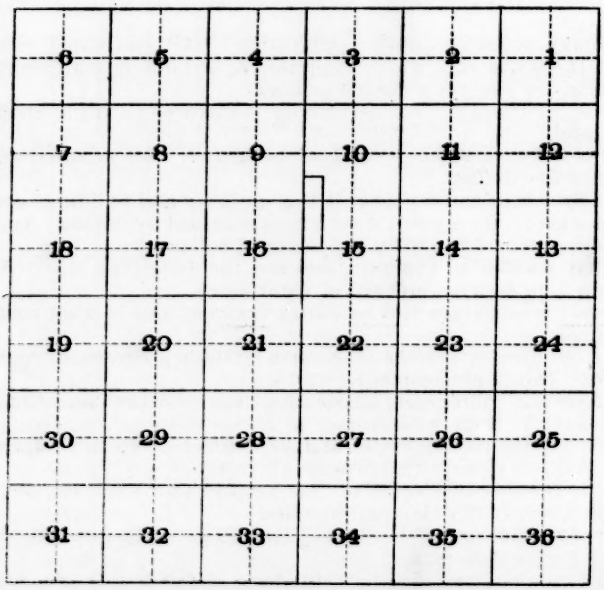
Dated July 7th, 1874.

(Name in full.)

(Signed) WILLIAM COOK.

COUNTRY PROPERTY.

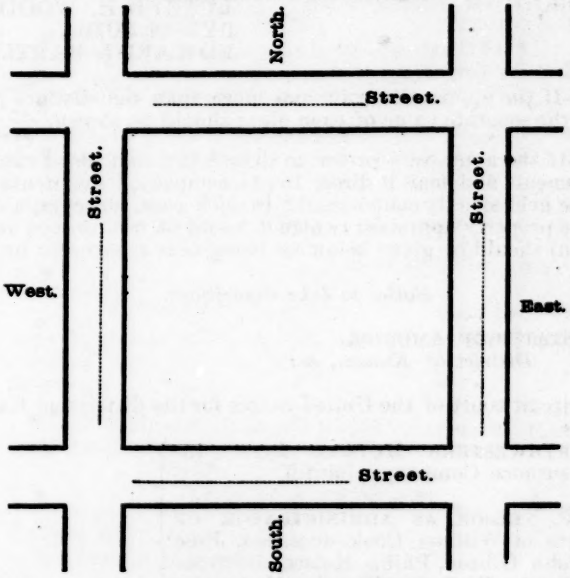
Mark location on this diagram.



Township No. 11 S., range No. 25 E.

CITY PROPERTY.

Mark location on this diagram.



175 APPRAISAL OF PROPERTY.

To the executive committee of the Northwestern Mutual Life Insurance Company:

GENTLEMEN: We the undersigned hereby certify that we are well acquainted with the value of real property in Wyandott County, Kansas, that we have carefully appraised the real estate described in the foregoing application, and that in our judgment the cash market value of (Insert "in the foregoing application" or "herewith below," as the case may be.) the ground, exclusive of the buildings, is ten thousand five hundred (Insert the amount in words.) ($10,500.00), and that the cash value of the buildings is one thousand dollars ($1,000.00), making a total value of eleven thousand five hundred dollars ($11,500.00).

We also state that the condition of the property is truly set forth by the applicant in his accompanying statement, that his answers to the questions contained therein are true as we verily believe, and that the property is so situated with reference to the best position for residence and business in that locality, that it will ~~not be~~ likely to depreciate in (business, residence or farming.) (insert will or will not.) value in the future.

We too are well acquainted with the credit, reliability and business promptness of William Cook, who proposes to get a loan from your company of $5,000 on the property herewith appraised, and state that his (his or their) credit is good, and we believe that he will pay the interest promptly (insert "good, fair or poor," as may be true.) (he or they.) (insert "promptly, leisurely or slowly," as may be most probable.) and that the loan is a desirable one for the company to make, and that (insert "desirable, tolerable or poor.") t would be so regarded by the people generally.

In testimony whereof we have hereunto set our hands, at Wyandotte, Kans., this seventh day of July, 1874.

LUTHER H. WOOD,
BYRON JUDD.
176 EDWARD L. BARTLETT.

NOTE.—If the application embraces more than one distinct piece of property, the separate value of each piece should be shown.

N. B.—If the appraisers prefer to detach the half sheet containing their statements and mail it direct to the company, its contents will, if desired, be held strictly confidential. In such case, however, a description of the property appraised (which it would be well to copy from the application) should be given below as being that referred to by them.

177 *Notice to take depositions.*

UNITED STATES OF AMERICA,
District of Kansas, ss:

In the circuit court of the United States for the district of Kansas.

THE NORTHWESTERN MUTUAL LIFE INSURANCE Company, plaintiff,
vs.
GEORGE P. NELSON, AS ADMINISTRATOR OF the estate of William Cook, deceased, Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Nicholas McAlpine, Joseph Davis, The City of Wyandotte, Wilson Shannon, and Nelson Cobb, defendants.

The defendants in the above-entitled suit, and their counsel and solicitors in said suit, are hereby notified and required to have and produce before H. C. Hollister, examiner, at the office of Clough & Wheat, in the city of Leavenworth, in the county of Leavenworth, in the State of Kansas, on Wednesday, the fourteenth day of November, A. D. 1877, at eight o'clock a. m. of that day, each and every policy of insurance on the life of William Cook ever made or issued by the above-named plaintiff, and each letter ever written or sent by the said plaintiff or by any officer or agent thereof to said William Cook, including the letter of which a copy marked A is hereto attached, and the policy in said letter mentioned.

178 And you are further notified and required to have and produce every such policy of insurance and every such letter in the above-named court, at each and every trial of said suit, so that the same can be used and read in evidence.

Dated this 10th Nov., 1877.

CLOUGH & WHEAT,
Counsel for Plaintiff.

STATE OF KANSAS,
County of Wyandotte, ss:

Received this notice on the 12th day of November, A. D. 1877, at 8 o'clock a. m., & served the same in my county by giving to and leaving

with W. J. Buchan, the attorney for the defendants, a true copy thereof, on the 12th day of November, A. D. 1877, at 9 o'clock of said day.

CHAS. H. MILLER,
U. S. Marshal,
By W. H. RYUS,
Deputy U. S. Marshal.

Fees: Servis, 2.00; copy, 25.

179 EXHIBIT A.

A.

(Copy.)

LEAVENWORTH, *Dec.* 31, 1874.

WILLIAM COOK, Esq.,
Wyandotte:

DEAR SIR: Enclosed find your life ins. policy for $5,000. No. 80206. Premium paid.

Yours, truly,

WM. BOOTH,
Per A. E. T.

180

181 *Order of Examiner.*

UNITED STATES OF AMERICA,
District of Kansas, ss:

In the circuit court of the United States for the district of Kansas.

THE NORTHWESTERN MUTUAL LIFE INSURance Company, plaintiff,
vs.
GEORGE P. NELSON, AS ADMINISTRATOR OF the estate of William Cook, deceased, Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Nicholas McAlpine, Joseph Davis, The City of Wyandotte, Wilson Shannon, and Nelson Cobb, defendants.

It appearing to the undersigned, H. C. Hollister, an examiner of the above named circuit court to take testimony, that the plaintiff in the above entitled suit has given notice to the above named George P. Nelson, as administrator of the estate of William Cook, deceased, Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Joseph Davis, and the City of Wyandotte, defendants in said suit, that said plaintiff desires the evidence to be adduced in said suit to be taken orally, and said plaintiff having moved said examiner to fix, by order, the time and place for the taking of such evidence, and what reasonable notice thereof should be given to said defendants, it is therefore ordered that evidence be taken in said cause at the office of James
182 S. Gibson, in the city of Wyandotte, in the county of Wyandotte, in the State of Kansas, commencing at 10 o'clock a. m. on the 29th day of October, A. D. 1877, and that the taking of such evidence be continued and adjourned from time to time as shall or may be prop-

erly ordered; and it is further ordered that two days' notice of the time and place of taking evidence as aforesaid be given to said defendants, George P. Nelson, as administrator as aforesaid, Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Joseph Davis, and The City of Wyandotte.

Dated at Leavenworth City, Kansas, this 26th day of October, A. D. 1877.

H. C. HOLLISTER,
Examiner.

It is hereby agreed that the taking of testimony in the within entitled suit before the within named examiner, H. C. Hollister, shall commence at the office of James S. Gibson, in the city of Wyandotte, in the State of Kansas, on the 29th day of October, A. D. 1877, and be continued from time to time and place to place, according to law and the rules in such case provided. This is in behalf of both parties.

CLOUGH & WHEAT,
Counsel and Solicitors for Plaintiff.
W. J. BUCHAN,
Counsel for all the Defendants except N. McAlpine, Wilson Shannon, and N. Cobb.

(Endorsed:) The N. W. Mutual Life Ins. Co. vs. George P. Nelson, adm'r estate of Wm. Cook, et al. Examiner's order fixing time, &c., to commence taking testimony.

183 *Notice.*

UNITED STATES OF AMERICA,
District of Kansas, ss:

In the circuit court of the United States for the district of Kansas.

THE NORTHWESTERN MUTUAL LIFE INSURance Company, plaintiff,
vs.
GEORGE P. NELSON, AS ADMINISTRATOR OF the estate of William Cook, deceased, Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Nicholas McAlpine, Joseph Davis, The City of Wyandotte, Wilson Shannon, and Nelson Cobb, defendants.

You, the above named George P. Nelson, as administrator of the estate of William Cook, deceased, Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Joseph Davis, and The City of Wyandotte, defendants in this the above entitled suit, and W. J. Buchan, your counsel, are hereby notified that The Northwestern Mutual Life Insurance Company, the plaintiff in said suit, desires the evidence to be adduced in said suit to be taken orally.

Dated this 23rd day of October, A. D. 1877.

CLOUGH & WHEAT,
Counsel and Solicitors for Plaintiff.

This notice was served on me this 24 day of Oct., A. D. 1877, by delivery of a duplicate of the same to me as counsel for the above named

George P. Nelson, administrator of the estate of William Cook, deceased, Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley
184 Charles W. Twist, Joseph Davis, and The City of Wyandotte.
W. J. BUCHAN.

(Endorsed:) The N. W. Mutual Life Ins. Co. vs. Nelson, adm'r, &c. Notice that pl'ff desires evidence to be taken orally, &c.

185, 186 Circuit court of the United States for the district of Kansas.

THE NORTHWESTERN MUTUAL LIFE INSURance Company, plaintiff,
vs.
GEORGE P. NELSON, AS ADMINISTRATOR OF the estate of William Cook, deceased, Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Nicholas McAlpine, Joseph Davis, The City of Wyandotte, Wilson Shannon, and Nelson Cobb, defendants.

Testimony taken on the part of plaintiff and defendants under the sixty-seventh rule of practice for the courts of equity of the United States, and in pursuance of the foregoing notice, order, and stipulation, by H. C. Hollister, examiner in equity.

OFFICE OF JAMES S. GIBSON,
Wyandotte, Kansas, October 29, *A. D.* 1877—10 o'clock, a. m.

Present, L. B. Wheat for plaintiff, W. J. Buchan, counsel for defendants.

187 *Isaac B. Sharp.*

ISAAC B. SHARP, of lawful age, a witness produced on the part of the plaintiff, being by me first examined, cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, deposes as follows:

Direct examination by L. B. WHEAT:

Q. What is your name, age, and place of residence?

A. Isaac B. Sharp; age, 41 years; residence, Wyandotte, Kansas.

Q. Were you acquainted with William Cook in his lifetime; and are you acquainted with Jane Cook, his wife?

A. I was acquainted with William Cook in his lifetime, and am acquainted with Jane Cook, his wife, now his widow.

Q. Did you see William Cook write?

A. Nothing but his signature; I have seen him write his signature.

Q. Did you ever see said Jane Cook write?

A. Often.

Q. State whether you are acquainted with the signatures of said William Cook & Jane Cook.

A. I am acquainted with the signature of William Cook; but as to Jane Cook, I am acquainted with her first name, but not as to her second name, she having been the widow of James Barnett, Wm. Nesbitt, and William Cook, of which signatures I was well acquainted at the time, having been probate judge, before whom she made settle-
188 ments as guardian of minor children.

Q. Were you acquainted with Allison Crockett, whose signature as register of deeds, and whose name as a witness is on this mortgage which appears to have been signed by William Cook and Jane Cook, and is marked Exhibit No. 1.

(Attorney for plaintiff here produces a mortgage from William Cook and Jane Cook to plaintiff, which mortgage is by me marked Exhibit No. 1.)

A. I was; he is now dead; he died about August 14, 1876.

Q. Were you acquainted with the signature of said Allison Crockett, and have you seen him write?

A. I was well acquainted with his signature, and have often seen him write.

Q. State who wrote the signature, "William Cook" to said mortgage as it appears written thereon, at the end thereof, just above the signature "Jane Cook;" state what you know and what you believe as to who wrote that signature, "William Cook," and each word thereof.

A. I do not know who wrote the signature "William Cook" to said mortgage; I have no belief about it; the handwriting of "Cook" in my impression is William Cook's handwriting; but in fifteen years experience with him, and doing a considerable amount of business with him, and during which he made his signature often, he never signed his first name in full but invariably signed it "Wm. Cook."

189 Q. If I understand you right, the word "Cook" you refer to as being in your opinion written by said William Cook, is the word "Cook" in and part of said signature William Cook?

A. It is.

Q. State your opinion and what you believe as to who wrote the signature "Jane Cook" on said mortgage immediately after the aforesaid signature "William Cook."

A. I do not know who wrote the signature "Jane Cook" to said mortgage. It is my belief from my knowledge of her writing that she wrote it herself.

Q. State your opinion and what you believe as to who wrote the signature "Alison Crockett" where it is written as a witness on said mortgage.

A. I am well acquainted with the writing of Alison Crockett, and have been for fifteen years; he is now dead; said signature Alison Crockett as a witness to said mortgage, is the genuine signature of Alison Crockett.

Q. Look at the signature "Wm. Cook," on the back of this bill of exchange, dated Milwaukee, Dec. 26, 1874, for $4,781\frac{85}{100}$, in favor of William Cook and Jane Cook, marked Exhibit No. 3, and tell what you know, and what your opinion and belief is as to who wrote that signature Wm. Cook on the back of said bill of exchange.

190 A. I do not know who wrote said signature; it is my belief said William Cook wrote it.

Q. Look at the signature "Jane Cook" on the back of said bill of exchange, and state what you know and what your opinion and belief is as to who wrote the signature "Jane Cook" thereon.

A. I do not know who wrote said signature. From my knowledge of her handwriting, I think she wrote it.

Q. State what your knowledge of the handwriting of said Jane Cook is—how you acquired it?

A. From having seen her sign her name as Jane Barnett, her first husband's name; from having seen her sign it as Jane Nesbitt, her second husband's name; and from having seen her sign it as Jane Cook,

her third husband's name. I drew settlements for her as Jane Cook, and approved settlements for her as probate judge, of Wyandott County, Kansas, as Jane Barnett and Jane Nesbit.

Q. State what your occupation is and has been.

A. I am an attorney at law, and for 8 years was probate judge of Wyandott County, Kansas.

Q. Look at this bond marked Exhibit No. 2, made by William Cook to the plaintiff, and state what you believe and what your opinion is as to who wrote the signature "William Cook" to said bond (said bond is here shown the witness), and the same as to each part of that signature.

A. In my opinion the handwriting of "Cook" is the handwrit-
191 ing of said William Cook; but the word "William is not in his handwriting in my opinion, because I never knew him to sign his name "William" in full; but always "Wm." for William.

Q. If I understand you right, you think said William Cook wrote the word "Cook" in that signature, "William Cook" in that signature, "William Cook" to said bond?

A. Yes, I do.

Q. Look at this letter dated Wyandot, Dec. 19, '74, directed to "Wm. Booth, esq.," signed "Wm. Cook," and state what your belief and opinion is as to who wrote that signature Wm. Cook to that letter marked Exhibit No. 5.

(Said letter is now here shown the witness.)

A. In my opinion William Cook wrote it.

Cross-examination by W. J. BUCHAN:

Q. State whether the signature William Cook to the mortgage is written as the said William Cook was in the habit of signing his name.

A. It is not. William Cook was in the habit of signing his name "Wm. Cook."

Q. State whether or not in your opinion the name William which precedes Cook, in the signature referred to by you, was written by William Cook, deceased.

A. It is not, because in fifteen years' intimacy with his signature I never knew him to write it in any other way than "Wm."

(Mortgage marked Exhibit No. 1 shown witness and the
192 name William Cook in said mortgage other than as the signature of the said William Cook, and the witness asked.)

Q. State whether or not in your opinion the name William, which occurs in other places in said mortgage, was written by the same person who wrote the name William to the signature of the said William Cook which purports to be signed by William Cook, deceased.

A. In my opinion, it is.

Q. State whether or not in your opinion either or any of the words "William" in said mortgage or the signature thereto were written by William Cook, deceased.

A. In my opinion they were not.

Q. State whether or not in your opinion William Cook, deceased, signed his name to the mortgage in question as the same appears signed thereto.

A. I do not. In my opinion the word "Cook" was written by him, but that the word "William" was not, in my opinion.

Q. From your knowledge and acquaintance of fifteen years of and with said William Cook, do you believe that he wrote his name as the same

appears to be signed to said mortgage, or that he ever wrote it as signed there?

(Plaintiff objected as incompetent and irrelevant.)

A. I do not.

Redirect examination by Mr. WHEAT:

Q. Why don't you believe he ever wrote it as signed to that mortgage?

193 A. For the reason I never knew him to sign his name "William," but as far as my knowledge goes always "Wm."

Q. Look at this letter marked Exhibit No. 6, dated Dec. 9th, 1874, addressed Wm. Booth, esq., signed "William Cook," and state in whose handwriting you believe the word "Cook" in that signature "William Cook" to be, and who in your opinion wrote that work "Cook" in that signature?

A. In the handwriting of William Cook.

Q. State whether you still think and believe that said William Cook wrote the word "Cook" in the aforesaid signature "William Cook" to the aforesaid mortgage where the same appears above the name "Jan Cook."

A. I do not know whether William Cook wrote it or not. In my belief the said word "Cook" is in the handwriting of said William Cook. I believe he wrote the said word "Cook" in that signature, but I do not know that he signed it.

Q. To avoid being misunderstood I will again ask you to state if you believe said William Cook wrote said word "Cook" in the last mentioned signature "William Cook"?

A. I have no belief about it. In my opinion it was written by William Cook.

Q. State whether said word "Cook" in that signature looks like the handwriting of said William Cook, and as though written by him.

194 A. It does; and if opinion may be termed belief, then it is my belief he wrote it.

Recross-examination by W. J. BUCHAN:

Q. Are you equally strong in the belief or opinion that the word "William" in said signature is not in the handwriting of said William Cook and was not written by him.

A. I am.

Redirect examination by Mr. WHEAT:

Q. Why is that so as to the word "William"?

A. For the reason that I never knew him to sign his name in any other manner than "Wm. Cook."

Re cross-examination:

Q. In your opinion is the word "William" in said signature in the handwriting of William Cook?

A. The word "William" I believe to be not in his handwriting; the word "Cook" I believe to be in his handwriting.

ISAAC B. SHARP.

Subscribed and sworn to before me this 29th day of October, A. D. 1877.

H. C. HOLLISTER,
Examiner.

195 *Lawson Cook.*

LAWSON COOK, of lawful age, a witness on the part of the plaintiff, being by me first duly examined, cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, deposes as follows:

Examined by L. B. WHEAT:

Q. Look at this letter dated Wyandotte, Kansas, Dec. 9th, 1874, addressed to Wm. Booth, esq., with the signature William Cook to it, marked Exhibit No. 6 (here said letter is shown to the witness), and state who wrote said signature William Cook to that letter.

A. William Cook wrote that.

Q. Did you see him write it?

A. Yes, sir.

Q. Who wrote that part of said letter which preceed's said signature of William Cook?

A. I wrote that part of the letter which preceed's said signature.

Q. Look at this mortgage marked Exhibit No. 1 (here the above-mentioned mortgage is shown to the witness), and state in whose handwriting the signature William Cook to that mortgage is, where it is written just above the signature Jane Cook.

A. I think that is his signature; I mean William Cook's signature.

Q. State whether you know the handwriting of said William Cook and whether you frequently saw him write or not.

196 A. I think I am pretty well acquainted with his handwriting, and I have seen him write.

Q. State what relation you were to him and what business connection you had with him.

A. I was his nephew, and at the time I wrote said letter, I working for the railroad, but previous to that I was in the bank with him. He had a private bank and did a small banking business, and I clerk for him a couple of years.

Q. Look at the signature William Cook to this bond to the plaintiff, marked Exhibit No. 2, and state in whose handwriting said signature is, if you can tell (here the above-mentioned bond is shown to the witness).

A. I think that is his signature.

Q. Who do you believe wrote said signature William Cook to said bond?

A. I believe said William Cook wrote it.

Q. Do you think you know the handwriting of said William Cook?

A. Yes, sir.

Q. Is said William Cook living or dead; and, if dead, when did he die?

A. He is dead; I think he died about September, 1876.

Q. Look at this signature William Cook to this letter dated Wyandott, Dec. 18, 1874, addressed to H. L. Palmer, esq., president, and state who you believe wrote the signature William Cook to that letter, which letter you see is marked Exhibit No. 4. (Here said letter marked Exhibit No. 4 is shown to the witness.)

197 A. I believe said William Cook wrote that signature.

Q. Look at the signature Wm. Cook on the back of this bill of exchange marked Exhibit No. 3, and state who you believe wrote that signature. (Here the above mentioned bill of exchange is shown to the witness).

A. I believe the said William Cook wrote that.

Q. State whose handwriting all these signatures you have mentioned look like.

A. Like the handwriting of said William Cook.

Cross-examined by W. J. BUCHAN:

Q. Was Mr. Cook in the habit of signing his name by writing William in full, or "Wm."?

A. I have seen him sign his name oftener Wm. than I have William.

Q. Did you ever see him sign it William in full except at the time he signed the letter written by yourself, referred to in your examination-in-chief?

A. Yes, sir; I have seen him sign it written in full.

Q. Can you recall any other time than the one referred to by you of his writing his name William in full?

A. I have a couple of deeds from him which I think are signed William in full.

Q. Can you swear positively that the signatures William Cook
198 signed to the bond and mortgage marked Exhibits No. 1 and No. 2 were written by William Cook?

A. Yes, sir; I believe they were written by William Cook.

L. COOK.

Subscribed and sworn to before me this 29th day of October, A. D. 1877.

H. C. HOLLISTER, *Examiner.*

J. B. Scroggs.

J. B. SCROGGS, of lawful age, a witness on the part of the plaintiff, being by me first examined, cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, deposes as follows:

Examined by L. B. WHEAT:

Q. Look at this mortgage to the plaintiff and at the names William Cook and Jane Cook thereto, and state, if you can, who wrote the signature William Cook to that mortgage, which mortgage, you see, is marked Exhibit No. 1.

A. In my opinion William Cook wrote it.

Q. Were you acquainted with his handwriting, and had you seen him write?

A. I am acquainted with his handwriting, and have seen him write.

Q. Look at the signature William Cook to this bond to the
199 plaintiff marked Exhibit No. 2, and state in whose handwriting that signature is.

A. William Cook's.

Q. About when did said William Cook die?

A. I don't know.

Q. State in whose handwriting the signature William Cook to this letter, marked Exhibit No. 4, is,

A. That is in William Cook's handwriting.

Q. State whether you assisted in transacting any of the business connected with said William Cook's getting a loan of money in 1874 from the plaintiff?

A. I don't remember the date exactly, but some time in 1874 or 1875, the firm of Scroggs & Bartlett, attorneys, did some business for William

Cook with the plaintiff in reference to a loan. I think it was in 1874. These papers are marked Exhibit No. 8, and one marked Exhibit 9, were connected with that business.

Q. Who wrote the signature William Cook after the printed word "signed" on the second page of said Exhibit No. 9?

A. William Cook, in my opinion.

Q. Who wrote the signature William Cook on the second and fourth pages of said Exhibit No. 8, where the same is written on those pages after the printed word "signed"?

A. In my opinion William Cook.

200 Q. In whose handwriting do the signatures you have mentioned appear to be?

A. In that of William Cook.

Cross-examined:

Q. Did you see William Cook write his name to any of the papers referred to by you?

A. Not that I remember.

Q. Are the said signatures of William Cook testified to by you signed as was his habit of writing his name?

A. He generally wrote his name Wm. Cook.

Q. Did you ever see him sign it William in full?

A. I can't say I ever saw him sign it William in full.

Redirect examination by Mr. WHEAT:

Q. Why did he sign it William in full to these papers?

A. From my recollection of this transaction, and knowledge of business of that character, I think he signed it William in full pursuant to instructions from the firm of Scroggs & Bartlett, his name being written that way in the body of the instruments. I state this from impression only.

J. B. SCROGGS.

Subscribed and sworn to before me this 29th day of October, A. D. 1877.

H. C. HOLLISTER,
Examiner.

201 With the consent of the parties it was ordered that this examination be adjourned until to-morrow morning, October 30, 1877, at 8 o'clock a. m.

H. C. HOLLISTER,
Examiner.

OFFICE OF J. C. GIBSON,
Wyandotte, Kansas, October 30, 1877—8 o'clock a. m.

This examination was resumed pursuant to adjournment.

Present, L. B. Wheat, counsel for plaintiff; W. J. Buchan, counsel for defendants.

D. R. Churchill.

D. R. CHURCHILL, a witness on the part of the plaintiff, being by me first examined, cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

Examined by L. B. WHEAT:

Q. Look at this mortgage to the plaintiff signed with the names Will

iam Cook and Jane Cook, which mortgage is marked Exhibit No. 1, and state whether you were acquainted with William Cook and Jane Cook?

A. Yes, sir; I was acquainted with both of them. William Cook is now dead.

Q. State what official position you hold.

A. Probate judge of Wyandotte County, Kansas.

202 Q. State whether you have seen said Jane Cook write, and whether you know her handwriting?

A. I have seen her sign her name several times. I think I could tell her handwriting.

Q. Look at the signature Jane Cook on the above mentioned mortgage and state what you believe and your opinion as to who wrote that signature?

A. It looks to me like her signature. I think Jane Cook wrote it.

Q. Look at this signature, Jane Cook, on the back of this bill of exchange, dated Milwaukee, Dec. 26, 1874, for $4,781.65, payable to the order of William Cook and Jane Cook, and marked Exhibit No. 3, and state what your opinion is and what you believe as to who wrote that signature, Jane Cook, on the back of said bill of exchange, and as to whose handwriting that signature is in?

A. I think it is in the handwriting of Jane Cook, and I think she wrote it. It looks like her signature.

D. R. CHURCHILL.

Subscribed and sworn to before me this 30th day of October, A. D. 1877.

H. C. HOLLISTER,
Examiner.

E. L. Bartlett.

E. L. BARTLETT, of lawful age, a witness on the part of the plaintiff, being by me first duly examined, cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

203 Examined by L. B. WHEAT:

Q. State your name, age, place of residence, and occupation.

A. My name is Edward L. Bartlett; age, 29 years; residence, Wyandotte, Kansas, and occupation is an attorney at law.

Q. Have you seen many people write, and are you acquainted with handwriting so as to be able to tell signatures of people you have seen write?

A. I have seen a great many different handwritings and am familiar with different handwritings and am able to tell the handwriting of people I have seen write.

Q. Look at the signature William Cook on the second page of this paper marked Exhibit No. 9, and state who wrote that signature on that page where it appears thereon after the printed word "signed" and also state whether you saw that signature written; and if you did, who wrote.

A. I saw William Cook write that signature at the place designated, and recognize it as his writing.

Q. Look at the signature William Cook on the second page and on the fourth page of this Exhibit No. 8, now handed you, and state who wrote the signatures William Cook on those pages of that paper where the same appear thereon immediately after the printed word "signed."

204 A. Each of those signatures were written by William Cook in my presence, and I recognize those signatures as being in his handwriting.

Look at the signature Wm. Cook on this writing marked Exhibit No. 7, now handed you, and dated Wyandott, July 6th, '74, and state if you can, who wrote that signature.

A. I recognize this letter as the handwriting of William Cook and the signature as his.

Q. Look at this letter now handed you in substance in the words following, to wit:

"WYANDOTTE, *Dec.* 19, '74.

"WM. BOOTH, Esq'r:

"Papers sent this day by expr's.

"Yours, &c.,

"WM. COOK."

land state who wrote that letter, that is, in whose handwriting it is.

A. I recognize this letter as being in the handwriting of William Cook and the signature as his. I believe he wrote it. This is the letter marked Exhibit No. 5.

Q. Look at the signature William Cook in this writing, dated Wyandott, Dec. 18, 1874, and marked Exhibit No. 4, and state who wrote that signature thereon; that is, in whose handwriting it is.

A. I recognize that signature as that of William Cook. I believe he wrote it. It is in his handwriting.

Q. Look at this signature Wm. Cook on the back of this bill of exchange, marked Exhibit No. 3, now handed you (here the above named bill of exchange is handed to witness) and state what you know

205 about that signature and as to whose handwriting it is in.

A. I recognize it as the signature of William Cook. It is in his handwriting.

Q. Look at the signature William Cook to the bond to the plaintiff, marked Exhibit No. 2, now handed you, and state in whose handwriting that signature is, and who wrote it.

A. It is in the handwriting of William Cook, and I believe he wrote it.

Q. Look at the signature William Cook to this mortgage to the plaintiff, now handed you and marked Exhibit No. 1, where said signature is written above the signature Jane Cook and state in whose handwriting that signature, William Cook is, and who wrote it.

A, It is the signature of Willlam Cook, and I believe he wrote it; it is in his handwriting.

Q. What has become of the William Cook you have mentioned?

A. He died a little over a year ago.

Q. Look at the signature Alison Crockett where it is written as a witness to said mortgage and to the certificate of acknowledgment on said mortgage, and state whether you knew said Alison Crockett, what has become of him, what office he held, and whether you had seen him write, and whether you know his handwriting, and in whose handwriting those signatures Alison Crockett are.

A. I knew Alison Crockett in his lifetime; he was register of deeds of Wyandotte County, Kansas, for several years next before his

206 death. He died in August, 1876. I knew him well, and have seen him write, and am familiar with his handwriting, and know it. Said signatures Alison Crockett are in his handwriting, and I believe were written by him.

EDWARD L. BARTLETT.

Subscribed and sworn to before me this 30th day of October, A. D. 1877.

H. C. HOLLISTER,
Examiner

John Gibson.

JOHN GIBSON, of lawful age, a witness on the part of the plaintiff, being by me first duly examined, cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, deposes as follows:

Examined by L. B. WHEAT:

Q. What is your name, age, place of residence, and occupation?

A. John Gibson; aged 34 years; residence, Wyandotte City, Kansas; occupation, tobacco dealer.

Q. Look at this mortgage from William Cook and Jane Cook to the plaintiff, and at the signatures thereto, which mortgage you see is marked Exhibit No. 1, and state who wrote the signature John Gibson where it appears as a witness on that mortgage?

A. I wrote it. That is my signature.

207 Q. Where were you when you wrote that signature John Gibson on that mortgage, and who was present at the time?

A. It was at the residence of William Cook and Jane Cook, in this city of Wyandotte, Kansas, and said William Cook, Jane Cook, and Alison Crockett were present when I wrote that signature of mine on that mortgage.

Q. Where was that mortgage laying when you so wrote your name on it, and where was said Jane Cook at the time, and what was she doing, and where was said William Cook, and what was he doing?

A. The mortgage was laying on the table at the side of the room, and said Jane Cook was standing at the end of that table, looking at me. She did not say anything whilst I was in the room that I now remember. I think said William Cook was standing behind me in the room.

Q. State whether William Cook and Jane Cook, or either of them, wrote their signatures to said mortgage, after you went into that room.

A. I think it was after I left.

Q. State whether you signed your name before or after William Cook and Jane Cook signed said mortgage.

A. I can't tell for certain. I signed it before Crockett did. I signed it as a witness, and came away.

Cross-examined by W. J. Buchan:

208 Q. You did not see either William Cook or Jane Cook sign it?

A. No, sir; I did not that I recollect. If I did, I forget it.

Q. Who told you where to sign your name?

A. I can't tell now. I know I signed it.

Q. Did either William Cook or Jane Cook his wife, say to you they had or were going to sign that mortgage?

A. Not in the house, that I remember.

Q. Did Jane Cook at any time tell you she had signed that mortgage?

A. No.

Q. While you were present did Alison Crockett, who signed it as a witness, with you, explain to Jane Cook the contents of that mortgage?

A. I did not hear him say anything.

Q. Did you notice anything strange or peculiar in the actions or appearance of Jane Cook at the time you were there and signed as a witness to that mortgage?

(Plaintiff objected to the question as incompetent and irrelevant.)

A. Yes; she seemed to be in trouble; she looked as if she had been crying, but I don't think she was crying at the time, but she looked as if she was in trouble.

Q. Did she acknowledge the signing of that mortgage in your presence?

A. She did not speak.

209 Q. Did she make any sign?

A. She was standing at the end of the table, with one hand on the table and the other to her face; whether she nodded or not, I don't know. I would not swear to it.

JOHN GIBSON.

Subscribed and sworn to before me this 30th day of October, A. D. 1877.

H. C. HOLLISTER,
Examiner.

Jane Cook.

JANE COOK, of lawful age, a witness on the part of the defendants, being by me first examined, cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, deposes as follows:

Examined by W. J. BUCHAN:

Q. State your name, age, and place of residence.

A. Jane Cook; aged 49 years; residence, Wyandotte City, Kansas.

Q. Were you acquainted with William Cook in his lifetime? And if yea, what relation were you to him?

A. I was acquainted with him; he was my husband.

Q. Did you sign this mortgage marked Exhibit No. 1?

(Here the mortgage referred to was shown the witness.)

A. That is my name written to that mortgage.

210 Q. State how and under what circumstances your name was written to that mortgage; state fully.

(Plaintiff objected to the question as incompetent, and because this is not a competent witness to testify on that subject, and because this is not a competent witness to testify with reference to any communication or transaction between her and her husband.)

A. Mr. Cook came in and wanted me to sign a mortgage. I wanted to know what the mortgage was; he said it was on the buildings on this street. I told him I did not wish to sign the mortgage, and could not sign it; it was something I never believed in.

Q. Did you refuse to sign it, then?

(Plaintiff objected to this question for the same reasons as the last objection, and because it is leading. Defendant then withdrew the question.)

Q. Did you or did you not sign the mortgage at that time? And if not, what was done?

(Plaintiff objected for the same reasons as the two last aforesaid objections.)

A. Well, when I refused to sign it, he took me and set me in

211 the chair, and put the pen in my hand, and held my hand and wrote my name there.

Q. Who do you mean did this?

(Same objection as aforesaid.)

A. My husband, Mr. Cook.

Q. State who, if anybody except yourself and husband, were in the room at the time.

A. No, sir; there was no one in the room but ourselves.

Q. Where, if you know, was Alison Crockett, the officer who wrote the acknowledgment on said mortgage, and John Gibson, whose name appears as a witness to said signatures to said mortgage at this time?

A. They were out in the yard; they were not in the house, nor had not been in the house; they came up with him and stayed out in the yard.

Q. State whether or not said Alison Crockett came into the room where you and your husband were; and, if yes, state when and what he said, if anything, to you.

(Objected to as incompetent, and because this is not a competent witness to testify on that subject.)

A. After the mortgage was signed he came in; he asked me, "Where is the papers; are you going to sign?" Mr. Cook spoke up and said it is already signed. He asked me then if I signed it. I did not say
212 anything. Mr. Cook stood between me and Mr. Crockett; he as much as told me to keep my mouth shut by his motions; he looked me right in the face.

Q. What, if anything, did you say to Mr. Crockett, and what reply did he, Crockett, make to you?

(Plaintiff objected for all the reasons to the aforesaid objections of plaintiff.)

A. Well, Mr. Crockett said, "Mr. Cook, how many lots are there in this place?" and from that I said, "Mr. Crockett, what has this man been doing?" and he said, "Didn't he tell you?" and I said no. And I then asked him, "I would like to know something about this; has he mortgaged this place where we were living." Then he said, first, "Didn't Mr. Cook tell you?" I said no. Then he said, "I would like to own this place myself;" and from that I thought it was mortgaged; and then I said "I would like to know what he is doing, because I own property, and I have children;" and he said, "Mrs. Cook, it is nothing to injure you; it is this property down on Minnesota avenue."

Q. What property on Minnesota avenue did you understand Crockett referred to?

A. These frame buildings and lots.

Q. State what was said by yourself or Crockett in relation to the sixty-acre tract of land, your individual property at that time.

213 (Plaintiff objected to the question for the reasons given for its aforesaid objections.)

A. It was not mentioned at all.

Q. State who is the owner of the property described in the mortgage shown you, marked Exhibit No. 1, being sixty acres of land; and the property in said mortgage described, other than the lots mentioned therein.

(Question objected to by plaintiff as incompetent.)

A. I suppose I am the owner; I do not consider it anybody else's than mine.

Q. State who was the owner of it before your marriage to William Cook, deceased.

(Plaintiff objected as incompetent.)

A. I was the owner of it.

Q. In a former answer you said you refused, upon the solicitation of your husband, to sign the mortgage to the lots on Minnesota avenue as being the mortgaged property; please state why.

(Plaintiff objected, for all the reasons for its aforesaid objections.)

A. For the reason I wanted to hold it, because he had already spent fifteen thousand dollars of money belonging to me.

Q. State whether he had promised to give you that in place of that.

214 (Plaintiff objected, as incompetent, irrelevant, and because she is not a competent witness to testify on that subject or as to any communication or transaction between her and her husband.)

A. Well, he had said he wanted to, after he made the mortgage, that he wanted to settle up some debts here. That was all I knew about his business.

Q. After he had made what mortgage?

A. The mortgage on those frame buildings.

Q. State whether or not you were told by Alison Crockett that your sixty-acre tract of land was included in the mortgage marked Exhibit No. 1, and sued upon by the plaintiff in this case.

(Plaintiff objected as incompetent and leading, and because this is not a competent witness to testify on that subject.)

A. No; I said he did not. He said it was not touching my property; it was not touching anything that belonged to me.

Q. Did you or did you not sign the mortgage sued upon by plaintiff in this action, knowing that it was a mortgage covering your sixty-acre tract of land, described in said mortgage as follows, to wit: "Beginning at the southwest corner of the northwest quarter of section number fifteen, township number eleven south, of range number

215 twenty-five east; thence east forty poles; thence north two hundred and forty poles to the center of the north line of the southwest quarter of the southwest quarter of section number ten, township and range aforesaid; thence west forty poles to the northwest corner of the southwest quarter of the southwest quarter of said section number ten; thence south two hundred and forty poles to the place of beginning, containing sixty acres."

(Objected to by plaintiff as incompetent and because she is not a competent witness to testify on that subject.)

A. I did not know it.

Q. Would you or would you not have signed said mortgage had you been made acquainted with the fact that your land above described was included therein?

(Objected to for the same reasons given for plaintiff's aforesaid objections.)

A. No, sir; I would not have signed the mortgage if I had known it.

Q. State whether or not you signed the mortgage, as the same appears, of your own free will and accord?

(Plaintiff objected as incompetent, leading, and *and* because she is not a competent witness to testify on that subject or concerning any

216 communication or transaction between her and her husband.)

A. No, sir; I did not.

Q. State whether or not your name was written to said mortgage, as before described by you, by any use of force or violence by your said husband; and if so, what.

(Plaintiff objected as incompetent, irrelevant, and because she is not

a competent witness to testify on that subject or concerning any communication or transaction between her and her husband.)

A. Well, he I suppose threatened; he said if I did not sign that mortgage he would come off down town and go to drinking till he killed himself; those are just the words he said; and then from that he said he was going to compel me to sign it, and then, as I say, he forced me into the chair; he took me and set me in the chair and held me there, and took the pen and put it in my hand and guided my hand and wrote my name there.

Q. State whether or not Crockett read or explained the contents of said mortgage to you.

(Plaintiff objected for the reason last aforesaid.)

A. No, sir; he did not. I wanted Mr. Cook to let him come in and explain it to me. He said, "I am telling you the truth; don't you believe me?"

217 Q. State what, if anything, Mr. Crockett did say about what property was included in the mortgage.

(Plaintiff objected for the aforesaid objections of plaintiff.)

A. Why, these frame buildings and lots on this street.

Q. What, if anything, did Mr. Crockett say about your sixty-acre tract of land not being covered by said mortgage?

(Plaintiff objected for the reasons given in its aforesaid objections.)

A. Why, that was not brought in at all; he never mentioned that at all.

Q. State whether or not you ever received any of the money or any benefit from the money obtained from this loan.

(Plaintiff objected for the same reasons as the objections aforesaid.)

A. No, sir; I never helped make any of his debts and I did not owe anybody.

Cross-examined by Mr. WHEAT:

Q. State when you were married to William Cook.

A. Four years ago the 19th of this month.

218 Q. You were a widow when you married him?

A. Yes, sir.

Q. What was the name of your husband before William Cook?

A. James Barnett.

Q. When did you marry James Barnett?

A. I can't just remember, but it is 28 or 29 years ago.

Q. When did James Barnett die?

A. It will be 16 years next March.

Q. If you had a husband before James Barnett what was his name?

A. I had none; James Barnett was my first husband.

Q. Did you have any children by said James Barnett; and if so, how many are living, and what are their ages?

A. Yes, sir; I had five children by him; one is dead and four are living. The oldest one is 26 years old, the next is twenty-four, the next is 22, and the youngest is 17 years old.

Q. State which are boys and which are girls, and their names.

A. Cerena Welsh is the name of the oldest; she is married. The next is a son 24 years old named Henry J. Barnett; the next is a son named Silas A. Barnett; the next is a girl named Izetta Barnett.

Q. The one that is dead, when did it die, and what is its name?

A. Martha M. Priestly; she died three years ago next March.

219 Q. Where did these children of yours live on the 19th day of December, A. D. 1874?

A. There have been the two younger ones with me, except the boy, part of the time; he was away part of the time; he was away five or six months.

Q. Were Silas and Henry living with you when Crockett was at your house, at the time you mentioned?

A. Henry was not. Silas was living with me, but was not at the house at that time.

Q. How soon before he came there? Was he there that day?

A. Yes, sir; he was there in the evening.

Q. Where did you live at that time; on the sixty acres or here in the city?

A. Here in this city.

Q. Who else was in the house besides you and your husband when your name was written to the mortgage marked Exhibit No. 1?

A. The youngest girl was in the house, but not in the room; she knew nothing of what was going on.

Q. How long before your son Silas came home that day?

A. Not till in the evening about supper time; this was after dinner.

Q. State how close you had neighbors residing at the time.

A. The closest neighbor was five lots below me.

220 Q. Did you have several neighbors close about you?

A. Yes, sir.

Q. State whether you were appointed guardian by the court for your above-mentioned children. And, if so, when.

A. I was. I first acted as administratrix of James Barnett' estates and then as guardian for the children. I was appointed here in the probate court of Wyandotte County, Kansas.

Q. State whether you can read and write, and when you learned to read and write.

A. I can only write, not well enough to write a letter. I can read writing, and can use a pen well enough to sign my name to anything. I learned when I was young.

Q. Did you read the aforesaid mortgage marked Exhibit No. 1?

A. No, sir; I did not.

Q. Did you ask Alison Crockett to read said mortgage to you?

A. No; I did not ask him to read it.

Q. State whether John Gibson was in the room when anything you have mentioned in your examination-in-chief was said.

A. I believe he was not in. He came in with Mr. Crockett, and Mr. Crockett gave him the pen, and said, "Here, John, you can sign your name and go." All I did say before Gibson was, Mr. Crockett asked me if I signed it, and I did not answer him.

221 Q. Was the names of William Cook and your own name written to that mortgage before John Gibson and Alison Crockett wrote their names where they appear on that mortgage as witnesses?

A. Yes; my name was put there before Gibson and Crocket signed it.

Q. How long did Gibson stay in the room at that time?

A. As soon as he signed his name he started right out; he did not stop at all.

Q. How long did Crockett stay there that time?

A. He did not stay any time. As soon as I commenced asking him questions Mr. Cook said, "Come; let's go"; and they went right out.

Q. State about how much property James Barnett left.

A. Well, it was mostly in land; I don't remember what it was appraised at, but before there was partition made there were about 220 acres altogether.

Q. You had the aforesaid sixty acres set off to you in the fall of 1874, a little while before that mortgage was made, did you not?

A. Well, I don't know; it was set off twice; the first time was two or three years before I married Mr. Cook. The last time it was commenced and in suit before I knew anything about it, and I did not know who had meddled themselves about it.

Q. State whether you had ever lived on said sixty acres since you married Cook.

222 A. No, sir; I had not.

Q. State whether you were able to go around this city of Wyandotte on and for several days after the time when your name was written on said mortgage.

A. No, sir; I was not; I was not well at the time.

Q. What was the matter with you?

A. I don't know; I had not been well for a number of years.

Q. Were not you in the habit of going around town those times?

A. I think if every woman stayed in the house as much as I do it would be a credit to them. It was cold weather, and I remained in the house a great deal. I did my own work and tended to my own business.

Q. Were you doing your own household work for your family those days—that is, the day and before and after your name was written on said mortgage?

A. Yes, sir; I did

Q. Was you able to have walked down to a lawyer's office in the city at that time, if you had chose to do so?

(Defendant objected as irrelevant, incompetent, and not cross-examination.)

A. I suppose I could have walked down to the office if I had been compelled to. If I had known what was going on, he could not

223 have got me to walk down here to sign my name to a mortgage.

Q. When you made papers before that which related to business, did you come down town, or did you have parties go to your house?

(Def'ts object, for the same reason as above.)

A. I never came down town to sign my name to anything.

Mr. Buchan then said, "You have come down to the probate court, have you not?"

The WITNESS answered: Yes, sir; I have come down to sign administration papers. Mr. Cook never had me come down town to sign any papers. All the signing I did was as guardian for my children.

Q. State whether your health was as good at that time as now.

A. No, it was not. I know the next day there was a funeral that he wanted me to go to, and I was not able. If I had been as well as I am to-day, I could have gone.

Redirect examination by Mr. BUCHAN:

Q. Is the sixty-acre tract of land owned by you and embraced in that mortgage a part of the property left you by your former husband, James Barnett?

A. Yes, sir; it is.

224 Q. When did you first learn that your sixty-acre tract of land was included in the mortgage to plaintiff?

A. After I came back from St. Louis.

Q. Before or after your husband's death?

A. It was after.

Q. You came back when?

A. The latter part of September.

Q. Was it soon after or a long time after?

A. It was after this suit was brought.

(Plaintiff objected to the last question and answer as incompetent, and because this witness is not competent to testify on this subject.)

Q. I will ask you a question—the same question asked by Mr. Wheat—and if you desire to *to* correct your answer to that, do so. "When you made papers before that which related to business, did you come down town, or did you have parties go to your house?" You answered that "I never came down town to sign my name to anything." Is that what you mean to say?

A. All the business I had to transact I always came down town. Mr. Cook never had me come down town to sign papers.

Recross examination:

Q. If, at the time your name was written on said mortgage, you had had any business matter requiring attention down town, would you have come down town to attend to it?

225 (Def'ts objected, as incompetent, irrelevant, and immaterial.)

A. No, sir; not at that present time. I did not want to come down here in the cold and mud.

Redirect examination:

Q. You may state what the condition of your health was at that time.

A. It was from a cold. I was not well. I was going around in the house, but was not well enough to be out.

JANE COOK.

Q. (By plaintiff, after the witness had signed her name above this line.) Mrs. Cook, please state how it is that your name is so well written on said mortgage.

(Def'ts object, as decidedly ridiculous, irrelevant, and incompetent.)

A. Well, I can tell you how. After he got through, he took the pen and straightened the places, and he said, a few days afterwards, he did that well. I did not know how it was written, because I was compelled to do the thing, and did not know how it was done, and never looked; even after Mr. Crockett took up the pen, he could not use it, and said he would have to come to his office before he could sign his

226 name. I do not know whether he signed it there in the house, or after he came down.

Q. You said your husband held your hand whilst your name was written to that mortgage where your name is written thereto; did you mean to say that?

A. Yes, sir; I do. I would not tell you so if he did not.

Q. Do you mean to say that your husband, William Cook, held your hand whilst the words Jane Cook on said mortgage—at the end thereof—were written?

A. Yes, I do; and I wish to God there had been a person present to witness it. I believe in the Almighty myself. To take a weak, frail woman and sit her down in a chair and compel her to sign her name is the most ridiculous thing a strong, healthy man could be guilty of.

Q. How long after your name was written on that mortgage was it before John Gibson and Alison Crockett came into the room where you and your husband were?

A. They came in a few minutes after.

Q. Did you say anything to either of them as to how your name had been written on said mortgage?

A. No, I did not. I couldn't say anything. John Gibson could tell you how I looked.

Q. Did your husband stay there as much as five minutes after Gibson and Crockett came into the room?

227 A. I couldn't tell how many minutes, or anything about it.

Q. Tell me whatever was said by any person after Gibson and Crockett came into the room before Gibson left.

A. All that was said, Crockett stood and looked at the paper awhile; then he said, "Mrs. Cook, did you sign this paper?" Mr. Cook stood between me and Crockett, and Crockett did not turn around to me—he had his face towards the paper—and Mr. Cook said she signed it. Crockett took the pen and could not sign his name, and handed it to Gibson, and said, "John, see if you can." John signed his name, and he then said, "You can go, now."

JANE COOK.

Subscribed and sworn to before me this 30th day of October, A. D. 1877.

H. C. HOLLISTER,
Examiner.

Then, with the consent of the parties hereto, by their attorneys, it is ordered that the further examination of witnesses in this case be adjourned until Friday, November 9, 1877, at 7 o'clock p. m., at the law office of Clough & Wheat in the city of Leavenworth, Kansas.

H. C. HOLLISTER.
Examiner.

228 LAW OFFICE OF CLOUGH & WHEAT,
Leavenworth, Kansas, Friday, November 9, 1877.—7 o'clock, p. m.

This examination was resumed pursuant to adjournment.

Present, L. B. Wheat, counsel for plaintiff.

Said plaintiff then offered and read in evidence each of the hereinabove-mentioned exhibits, numbered from one to nine, inclusive, which said exhibits are herewith severally filed and hereto prefixed.

Cushman Cunningham.

CUSHMAN CUNNINGHAM, a witness on the part of the plaintiff, having been by me first duly examined, cautioned, and solemnly sworn to testify the truth, the whole truth and nothing but the truth, deposes as follows:

Direct examination by L. B. WHEAT:

Q. State your name, age, and what has been your occupation.

A. Cushman Cunningham; aged, 45 years; I have been bookkeeper, bank-teller and cashier in the banking business for twelve years, for Scott, Kerr & Co., and the First National Bank of Leavenworth, Kansas, one after the other.

Q. State whether you have or have not seen many persons write, and whether you are or are not acquainted with handwriting and are

229 able to tell the handwriting of persons by comparison or seeing them write.

A. I have seen many persons write, and have examined many signatures daily during many years whilst acting in a bank. I consider myself competent to judge a person's handwriting as well by comparison as by seeing them write.

Q. Examine this signature "Jane Cook" to her deposition in this case (here the last above signature "Jane Cook" is shown the witness), and also examine the signature "Jane Cook" on the back of this bill of exchange (here the above-mentioned Exhibit No. 3 is shown the witness), and also examine this signature "Jane Cook" where it is written on this mortgage (here the above-mentioned Exhibit No. 1 is shown the witness), and state whether or not the said three signatures Jane Cook were or were not written by the same person.

A. In my opinion they were all written by the same person.

Q. What sort of a glass is that you have in your hand?

A. It is a magnifying glass.

Q. Please look at this signature "Jane Cook" through that magnifying glass where it is written to said mortgage, and state whether there has been any writing done on that signature since it was first written, or whether any place in it or part of it has been straightened since it was first written.

A. I think there have been no changes made in it since it was first written.

230 Q. If any person had taken a pen and straightened any place or part of that signature "Jane Cook" on that mortgage, would you be able with the examination you have given it to detect it?

A. I would; and I cannot detect any such thing.

Q. Is there any appearance of said signature on that mortgage having been altered in any respect since it was first written?

A. There is none.

Q. Would it be possible for another person than Jane Cook to have taken hold of her hand with a pen in it and therewith have written said signature "Jane Cook" where it is written on that mortgage in the manner it is written so as to resemble her genuine signature?

A. I think not.

Q. Could another person by such means have written that signature?

A. They could not.

C. CUNNINGHAM.

Subscribed and sworn to before me this 10th day of November, A. D. 1877.

H. C. HOLLISTER,
Examiner.

Wm. Booth.

WILLIAM BOOTH, a witness on the part of the plaintiff, being by me first duly examined, cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, deposes as follows:

231 Direct examination by L. B. WHEAT:

Q. What is your name, age, and place of residence?

A. My name is William Booth; my age is 48 years; my residence is Leavenworth, Kansas.

Then, with the consent of plaintiff's attorney, it is ordered that this examination be adjourned until to-morrow morning, at 8 o'clock, at the law office of Clough & Wheat, Leavenworth, Kansas.

H. C. HOLLISTER,
Examiner.

LAW OFFICE OF CLOUGH & WHEAT,
Leavenworth, Kansas, Saturday, November 10th, 1874—8 o'clock a. m.

This examination was resumed pursuant to adjournment, and the direct examination of William Booth was proceeded with as follows:

Q. State whether you knew William Cook in his lifetime.

A. I did.

Q. Did you correspond with him during his lifetime; write and receive letters from him?

A. I did.

Q. Did you receive letters from him in answer to letters you sent him?

A. I did.

232 Q. Are you acquainted with the handwriting of the said William Cook?

A. Only as to letters received from him.

Q. State how you came by these three letters. (Here the above-mentioned Exhibits No. 5, No. 6, and No. 7 were handed to the witness.)

A. I received them by mail, in envelopes marked Wyandotte City, Kansas.

Q. State in whose handwriting are the signatures "Wm. Cook" on said Exhibits No. 5 and No. 7, and the signature "William Cook" on said Exhibit No. 6.

A. I believe them to be in the handwriting of said William Cook.

Q. State what your position or connection was with the loan to said William Cook made by the plaintiff in 1874.

A. I was the general agent of the plaintiff in the State of Kansas, and looked after that loan to some extent.

Q. State what was the consideration that made up the five thousand dollars mentioned in the bond and mortgage by the plaintiff sued on in this action.

A. The consideration was five thousand dollars; $4,781\frac{65}{100}$ thereof were given to William Cook and Jane Cook, as shown by the above-mentioned bill of exchange, marked Exhibit No. 3, and $218\frac{35}{100}$ of that $5,000 was applied to the payment of a premium on a policy of insurance on the life of said William Cook, which $218\frac{35}{100}$ was used to

233 pay that premium as directed by him, William Cook, in his letter to H. L. Palmer, the then president of said plaintiff, which letter is the above numbered Exhibit No. 4.

Q. State whether previous to the time of the execution of said bond and mortgage you had any conversation with the defendant Jane Cook respecting the matter of such mortgage; and, if so, when and where, and what was that conversation?

A. Some time after the application shown by the above-mentioned Exhibit No. 8 was made, and previous to the execution of said bond and mortgage, I went to Wyandotte City and saw both William Cook and Jane Cook. I first met William Cook, and he took me around to see the property. I was somewhat unwell, and he took me around with a horse and buggy. He took me to his house to take dinner. After dinner I was still unwell, and laid down a while at his residence. Whilst I was there at his residence that time Jane Cook came into the room where I was after dinner. She told me she was very anxious to help Mr. Cook out his difficulty—debts that were pressing him—and was willing to mortgage her property, left to her in her own name. She told me that it was a very valuable piece of property. She said they had sold off

part of what had been left her, and told me the prices they had got for it. This conversation was about the sixty-acre piece of land described in said mortgage. I had been to see the piece of land before dinner, with William Cook. Whilst I was there that time we talked
234 about my having been to see said sixty-acre piece of land. Said Jane Cook took part in that conversation. At that time she said she would not sell that piece of property, but she was willing to mortgage it, to help her husband out of his financial difficulties.

Q. State whether said policy of insurance was delivered to said William Cook.

A. I sent it to him in the latter part of 1874, by mail, postage paid, with a letter, of which the following is a copy:

LEAVENWORTH, *Dec. 31st*, 1874.

WILLIAM COOK, Esq.,
Wyandotte:

DEAR SIR: Enclosed find your life-ins. policy for $5,000, No. 80,206. Premium paid.

Your', truly,

WM. BOOTH,
Per A. E. F.

Q. State when you first received said bond and mortgage after they were executed.

A. I received them about the 20th of December, 1874.

Q. What did you do with them?

A. I sent them by express to the home office of the plaintiff, in the city of Milwaukee, State of Wisconsin; I think, the same day I received them.

WM. BOOTH.

Subscribed and sworn to before me this 10th day of November, A. D. 1877.

H. C. HOLLISTER,
Examiner.

235 *Geo. H. Hyde.*

GEORGE H. HYDE, a witness on the part of the plaintiff, being by me first duly examined, cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, deposes as follows:

Direct examination by L. B. WHEAT:

Q. State your name, residence, and occupation.

A. My name is George H. Hyde; my residence is Leavenworth, Kansas; my occupation is cashier in Clark & Co.'s bank. I have been in that position twelve years and I have been in a bank over twenty years, except three years that I was in the service.

Q. State if you have seen many persons write and are acquainted with different handwriting and the mode and manner of writing and how to tell the difference between the signatures of different persons.

A. Yes, sir.

Q. Examine the signature "Jane Cook" to this mortgage, marked Exhibit No. 1. (The above mentioned mortgage is here shown the witness), and this signature "Jane Cook" on the back of this bill of exchange (here the above mentioned bill of exchange is shown the witness)

and this signature "Jane Cook" to her deposition in this case (here said deposition is shown the witness), and state whether or not those signatures were all written by the same person.

A. They were all written by the same person undoubtedly.

236 Q. State whether if William Cook had written said signature Jane Cook to said mortgage by taking hold of said Jane Cook's hand, you could tell that it had not been written by her voluntarily.

A. Yes, sir; I could tell it.

Q. State, then, whether that signature "Jane Cook" to said mortgage is her voluntary writing or is it forcible writing.

A. It seems to be voluntary. I have examined said signature through a magnifying glass and see no signs of its having been touched up at all.

Q. If said signature "Jane Cook" to said mortgage had been written otherwise than by her voluntarily, would it present the appearance it does?

A. I don't think it would.

GEO. H. HYDE.

Subscribed and sworn to before me this 10th day of November, A. D. 1877.

H. C. HOLLISTER,
Examiner.

J. M. Greybill.

JAMES M. GREYBILL, a witness on the part of the plaintiff, being by me first duly examined, cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, deposes as follows:

Direct examination by L. B. WHEAT:

237 Q. State your name, age, residence, and occupation.

A. My name is James M. Greybill; my age is 33 years; my residence is Leavenworth, Kansas; my occupation is assistant cashier of the First National Bank of Leavenworth. I have been in a bank 13 years.

Q. State if you have seen many persons write and are acquainted with different handwriting, and are able to tell the difference between the signatures of different persons, and can tell signatures by comparison.

A. Yes, sir.

Q. Examine the signature "Jane Cook" to this mortgage, marked Exhibit No. 1 (the above mentioned mortgage is here shown the witness), and this signature (the above mentioned mortgage is here shown the witness) and this signature "Jane Cook" on the back of this bill of exchange (here the above mentioned bill of exchange is shown the witness) and this signature "Jane Cook" to her deposition in this case (here said deposition is shown the witness), and state whether those signatures are all written by the same person or not.

A. I think they are.

Q. State whether the signature "Jane Cook" to that mortgage was written by her voluntarily or not?

A. That signature was written by her voluntarily, in my opinion. I have examined that signature through a magnifying glass, and I see no evidence of it having been touched up. It is clear that her signature to that mortgage is as it was first written.

238 Q. If said signature "Jane Cook" to said mortgage had been written otherwise than by her voluntarily, would it present the appearance it does?

A. No, sir; it would not.

J. M. GRAYBILL.

Subscribed and sworn to before me this 10th day of November, A. D. 1877.

H. C. HOLLISTER,
Examiner.

Then, with consent of attorney for plaintiff, it is ordered that this examination be adjourned until Wednesday, November 14th, 1877, at 8 o'clock a. m., at said office of Clough & Wheat, Leavenworth City, Kansas.

H. C. HOLLISTER,
Examiner.

LAW OFFICE OF CLOUGH & WHEAT,
Leavenworth, Kansas, November 14th, A. D. 1877—8 o'clock a. m.

Present, L. B. Wheat, counsel for plaintiff. No person appearing for defendant.

This examination was then resumed pursuant to adjournment.

L. B. Wheat.

L. B. WHEAT, a witness on the part of the plaintiff, being by me first duly examined, cautioned, and solemnly sworn to testify the
239 truth, the whole truth, and nothing but the truth, deposes as follows:

The witness here produced a paper which is herewith filed, and marked Exhibit No. 10, and then further testified as follows:

This paper was signed by W. J. Buchan, one of the counsel for such of the defendants as have answered in this case. He signed it in my presence on the 28th day of August, A. D. 1877, and the signature of Clough & Wheat on said paper marked Exhibit No. 10 is in my handwriting. I am one of the counsel for the plaintiff in this action.

L. B. WHEAT.

Subscribed and sworn to before me this 14th day of November, A. D. 1877.

H. C. HOLLISTER,
Examiner.

And thereupon came the defendants, by W. J. Buchan, and produces a letter, which is hereto prefixed, marked Exhibit No. 11, and admit that said letter, with the policy therein mentioned, which said policy is on the life of William Cook, in the sum of $5,000.00, requiring a cash annual premium of $218.45, was sent by William Booth to William Cook, and that said letter marked Exhibit No. 11 was written by said William Booth.

240 Here the testimony closed, and this examination was adjourned sine die.

H. C. HOLLISTER,
Examiner.

I, the undersigned, H. C. Hollister, do hereby certify that the several

exhibits numbered from one to eleven, both inclusive, are the exhibits, and all of the exhibits, which are above mentioned, and the same were produced and shown to the witnesses, respectively, as above stated and indicated.

H. C. HOLLISTER,
Examiner, Circuit Court of the United States for the District of Kansas.

I, H. C. Hollister, examiner, duly appointed by the circuit court of the United States for the district of Kansas, do hereby certify that on the several days named in the above and foregoing depositions I was attended at the places mentioned in said depositions by the counsel and witnesses aforesaid; that the said witnesses were duly sworn and examined, and the depositions were reduced to writing and read to the witnesses, and by them subscribed in my presence; and that Exhibits Nos. one to eleven, inclusive, hereto prefixed, were introduced and read in evidence in said cause during the taking of such depositions, and as above stated.

Dated at Leavenworth, Kansas, November 14th, 1877.

H. C. HOLLISTER,
241, 242 *Examiner of the Circuit Court of the United States for the District of Kansas.*

Examiner's fees.

Five days' attendance, at $3.00	$15 00
110 folios writing, @ 20c.	22 00
Swearing 12 witnesses	1 20
Filing eleven papers	1 10
Issuing order for examination	1 00
Postage	70
Total	$41 00

Said $41.00, my fees for the above and foregoing, was paid me by the above named plaintiff for Clough & Wheat, its counsel, this 14th day of November, 1877.

H. C. HOLLISTER,
Examiner.

Total fees on the above:

Examiner's fees	$41 00
Marshal's fees	2 25
Witness fees C. Cunningham paid by plaintiff in my presence	1 50
	$44 75

H. C. HOLLISTER,
Examiner.

(Endorsed:) No. 1928. Opened Nov. 28, 1877, at the request of W. J. Buchan, att'y for def't, by order of court. A. S. Thomas, clerk.
243, 244 (Envelope indorsed on the face:) The N. W. Mut. Life Ins. Co. vs. George P. Nelson, adm'r, et al. Depositions on the part of the plaintiff in the above entitled action taken at Wyandotte and Leavenworth, and duly sealed, addressed, and sent by me. H. C. Hollister, examiner in equity.

(Envelope indorsed on the back:) No. 1928. Sealed up and directed and mailed by me. H. C. Hollister, examiner. Filed Nov. 15, 1877. A. S. Thomas, clerk.

1 ct. postage stamp cancelled.	3 ct. postage stamp cancelled.	10 ct. postage stamp cancelled.	10 ct. postage stamp cancelled.	30 ct. postage stamp cancelled.	30 ct. postage stamp cancelled.

To the

CLERK U. S. CIRCUIT COURT,

TOPEKA,

KANSAS.

245 And on this day, to wit, November 24, 1877, there was filed in the clerk's office of said court the depositions of E. L. Bartlett, Jane Cook, Izetta Barnett, and Alfred Welsh, taken by defendants in this cause before M. B. Newman, a notary public of Wyandott County, Kansas, which said depositions are in the words and figures following, to wit:

Agreement to take depositions.

UNITED STATES OF AMERICA,
District of Kansas, ss:

In the circuit court of the United States for the district of Kansas.

THE NORTHWESTERN MUTUAL LIFE INSURance Company, plaintiff,
vs.
GEORGE P. NELSON, ADMINISTRATOR OF THE estate of William Cook, deceased, Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Joseph Davis, Nicholas McAlpine, The City of Wyandott, Wilson Shannon, and Nelson Cobb, defendants.

It is hereby agreed that the depositions of A. Welsh, Izetta Barnett, E. L. Bartlett, and a further examination of Jane Cook may be taken by defendants in this cause before M. B. Newman, notary public, this 21st day of November, A. D. 1877, at the office of Jas. S. Gibson, in the city of Wyandott, Kansas, and that plaintiff may take evi-
246 dence in rebuttal of what may be shown by said witnesses, continuing before such notary, all such depositions and evidence to have like force and effect as though taken before H. C. Hollister when he heretofore took depositions at said office in said case.

CLOUGH & WHEAT,
Counsel for Plaintiff.
W. J. BUCHAN,
For Def'ts.

247 *Depositions.*

UNITED STATES OF AMERICA,
District of Kansas, ss:

In the circuit court of the United States for the district of Kansas.

THE NORTHWESTERN MUTUAL LIFE INSURance Company, plaintiff,
vs.
GEORGE P. NELSON, AS ADMINISTRATOR OF THE estate of William Cook, deceased, Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Joseph Davis, Nicholas McAlpine, The City of Wyandott, Wilson Shannon, and Nelson Cobb, defendants.

Depositions of sundry witnesses taken in pursuance to the stipulation hereto attached and at the time and place therein set forth to be read in evidence in the above entitled case. Taken before me, a notary public in and for the county of Wyandott, State of Kansas.

Present at the taking of said depositions W. J. Buchan, att'y for defendants, and L. B. Wheat, att'y for plaintiff.

M. B. NEWMAN,
Notary Public.

248 *Deposition of E. L. Bartlett.*

EDWARD L. BARTLETT, of lawful age, being first duly sworn and solemnly cautioned to testify the truth, the whole truth and nothing but the truth, deposes and says:

Question by defendants' att'y. State your age, occupation, and place of residence.

Ans. My age is 29 years; occupation, a lawyer; residence, the city of Wyandotte, Kansas.

Quest. by same. Were you acquainted with William Cook, deceased, late of said city of Wyandotte?

Answer. I was.

Question by same. State what, if anything, you know respecting the application of said Cook for the obtaining a loan from the plaintiff in this case.

Answer. In the spring or early summer of 1874 William Cook came to me with one of the printed blank applications for a loan from the plaintiff, together with a list of lots in the city of Wyandotte, on which he said he desired to place a mortgage for plaintiff's benefit, together with his wife's farm, the description of which he did not know, but asked me to get it from the records, saying that Mr. Booth, agent of the plaintiff at Leavenworth, had requested him to have myself and two other responsible citizens to view and make a fair appraisement of the real estate and buildings separately in writing on the blank. I took the blank, and, together with Byron Judd and L. H. Wood, made the appraisement. I filled up the other portions
249 of the blank at Mr. Cook's direction, and gave it back to him. This was unsatisfactory for some reason, and I prepared a new application, the same parties appraised the property anew, and shortly

after Mr. Cook asked me to make an abstract of title to the lots and the land. Judge Brower examined it, reported that a partition suit in the district court was necessary to perfect the title of Mrs. Cook in the land. This I explained to Mr. Cook, and at his request Mr. Scroggs and myself, who were then partners, brought a suit in partition against the heirs of James Barnett, dec'd, for the whole tract, which suit was terminated and partition made as prayed for. A transcript of the journal entry was attached to the abstract and forwarded to Mr. Booth, agent of the plaintiff. Plaintiff then required bond from Mr. Cook conditioned for payment of special assessments against the city lots, or to bring a suit to contest their validity within a reasonable time, which I had executed as prepared by the plaintiff. This was returned as being unsatisfactory, together with a new bond for execution by said Cook, and sureties. In the mean time Cook had removed to St. Louis, had obtained the loan, and refused to do anything further about the bond spoken of in regard to the special assessments. I don't know from my own knowledge when or how he got the money.

Question by same. State who, if you know, took the acknowledgment of this mortgage.

250 Ans. I do not know. I never saw it until after this suit was commenced.

Quest. by same. Did you generally do Mr. Cook's business at that time?

Ans. I do not know of any other legal business he had had done for several years previous.

Quest. by same. State why, if you know, you did not prepare the mortgage and take the acknowledgment of the execution thereof.

Ans. I do not know.

Quest. by same. Had this land, the 60 acre tract, been partitioned before?

(This question is objected to as calling for incompetent evidence.)

Ans. It was attempted to be partitioned before in the probate court of said county. This partition was not considered good by judge Brewer, who examined the abstract of title.

Quest. by same. Who employed you to bring this suit?

Ans. William Cook.

Quest. by same. Did you ever have any conversation with Jane Cook about said partition suit?

Ans. I never did.

Question by same. Were you a notary public during 1874?

Ans. I was.

Cross-examination by plaintiff:

251 Quest. by plaintiff. State whether you saw said mortgage in this office a few days since when evidence was being taken in this case before H. C. Hollister.

Ans. I did.

Question by same. Do you know the handwriting of Allison Crockett, and if you do, state in whose handwriting the signature Alison Crockett, as a witness to said mortgage, and also to the certificate of acknowledgment on said mortgage, is?

Ans. I do know the handwriting of Alison Crockett, well; and his signature attached to the mortgage as a witness, and to the certificate of acknowledgment as register of deeds, are in his handwriting.

Question by same. State who was the plaintiff or plaintiffs in the partition suit first above mentioned.

Ans. My recollection is that it was Jane Cook, the wife of William Cook.

Quest. by same. State whether William Booth came here to Wyandotte to examine said 60 acre tract of land, and the lots soon after the application for a loan aforesaid was made.

Ans. My recollection is he did.

EDWARD L. BARTLETT.

Jane Cook.

Also JANE COOK, of lawful age, being first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, deposes as follows:

252 Question by defendant. Do you know one William Booth, who is the agent of an insurance company in Leavenworth?

Ans. I knew who he was after he was in my house.

Question by same. State as near as you can when it was he was in your house.

Ans. I think it was about three years ago in June.

Question by same. Was it last June, or next June coming?

Ans. Las' June.

Question by same. You may state what, if any, conversation you had with Mr. Booth, in relation to mortgaging your 60 acre farm.

Ans. I did not have any at all. Him and Mr. Cook came in as I had dinner ready, and the' sat right down to their dinners. I did not know who he was. I was not introduced to him. After they ate their dinners they went into the room, and I went on then gathering up my dishes, and Mr. Cook came out and told me that the gentleman was very sick, and that he had taken him into my room to lay down on the bed, and I wanted to know who he was and what he was. He said he was from Leavenworth, that he had a congestive chill, and that he was sick, and he wanted him to lay there till train time, as he had no other place to take him to. All the time that I spoke to the man was that he told me to go in and see him if he wanted any water, as his fever

253 might get up. That was the only time that I went in and asked him if he wanted any water, and he said it was very hot in there; and I went and got a fan and handed it to him. That was the only time that I went into the room while he was in the house. Mr. Cook came up along in the middle of the afternoon, and when he came out again he said he wanted me to make a cup of tea for him and have it ready before train time. Mr. Cook came up and they took their cup of tea, and went away before train time, and that was all that I knew about the man. Mr. Cook had always made the habit, when he brought a stranger to the house, to introduce me to him.

Question by same. Did you at that or any other time tell Mr. Booth that you were very anxious to assist your husband, Mr. Cook, out of his difficulties—debts that were pressing him?

Ans. *Ans.* No, sir; I did not; for I did not know that he was so in debt. I did not know anything about his business.

Question by same. Did you then or at any other time say to Mr. Booth that you were willing to mortgage your property left you in your own name?

Ans. I never talked with Mr. Booth at all about mortgage or anything else.

By same. Please answer this question yes or no.

I did not. I never thought of such a thing.

254 Q. Did you then or at any other time say to him that it was a very valuable piece of property?

Ans. No, sir; I never did.

Question. Did you have any further conversation with M'. Booth than that related by you in asking him if he wanted any water when you went to the door of the bed-room while he was lying down?

Ans. No, sir; that was all—more than he said it was very hot in there. I got him some water and handed him a fan; that was all that passed between us.

Question. What was Mr. Cook's habit in respect to acquainting you with his business affairs?

Ans. He never told me anything of his business affairs. He always kept it from me, and I knew nothing at all.

Question. Did you know then (at the time Mr. Booth was there) that your husband was in any financial difficulty?

Ans. No, sir; I did not. I knew that he was in the banking business and owned a great deal of property; that's all I knew.

Question. At the time Mr. Booth was there, did you know that your husband was wanting to borrow money?

Ans. No, sir; I did not know it.

Question. How long was it after the time Mr. Booth was there, if you recollect, that your husband presented the mortgage to you sued upon in this case?

Answer. Well, it was not until after he came back from California; in December, after he came back.

255 Question. Did you know that Mr. Booth, at the time he was at your house, or at any other time, had gone out and examined your sixty-acre tract of land?

Ans. No, sir; I did not know anything at all about it, nor know that he had been out.

Question. State whether or not Alison Crockett, who took the acknowledgment of the mortgage sued upon in this action, knew that the sixty-acre tract of land mentioned by you in a former deposition and described in said mortgage, was your separate property left you by a former husband?

Answer. I suppose he ought to have known it was, for he had known me for a number of years.

Question. What was Mr. Cook's habits in relation to drinking?

Ans. I think we all know what that was. He took sprees every five or six months that would last five or six weeks, so that he had to have a physician to cure him; he would be perfectly crazy.

Question. State how he treated his family when drinking.

Answer. He used profane language.

Question. State whether or not he was abusive to his family while drinking.

Ans. At times he was abusive, and at other times he would be very mild.

Question. State whether or not you ever authorized or employed
256 Messrs. Scroggs and Bartlett, attorneys, to commence and prosecute a suit in partition against your children in the district court of Wyandotte County.

Answer. No, sir; I did not.

Question. State whether or not you were ever consulted or advised with about the commencement or prosecution of such suit?

Answer. No, sir.

Cross-examination by plaintiff:

Question. State what you mean when you say Mr. Cook would be perfectly crazy.

Ans. Why, from drink; he knew nothing of what he was doing.

Question. How long would these spells last him?

Answer. I said he drank from five to six weeks, till he had to get a doctor to sober him.

Question. When he got sober, then how was he?

Answer. Why, he was ashamed of himself.

Question. How long would it take the doctor to cure him when he got in that condition?

Answer. If he got him sickened down he could cure him sooner than if he kept on his feet so that he could get more liquor.

Question. I want to know about how long it took the doctor to cure him each time; tell as near as you can.

Answer. Sometimes he would get him sober in three or four days, and sometimes a week.

257 Question. State where William Booth was when you handed him the drink and when you handed him the fan.

Answer. He was at my house where I am living now and was lying on the bed.

Question. How long was William Cook away from that house each time he left William Booth there?

Answer. They came up just as dinner was ready, and they went into the room and set down a few minutes; then he *then he* took him into bed, and then he, William Cook, came down in town and staid about an hour; then he came and went in and saw Booth; the next time he came down town and staid until he came up with a buggy and took Mr. Booth down to the depot.

Question. State how you know that man was William Booth?

Answer. He left a card on the bureau, and I asked Mr. Cook when he came back.

Question. State where you were living the spring of 1876?

Answer. I was here until April, then went to St. Louis and staid there about 5 months.

JANE COOK.

Deposition of Izetta Barnett.

Also IZETTA BARNETT, being first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, deposes as follows:

Question by defendant. Where were you living at the time just related by your mother, when this man Booth from Leavenworth

258 was at your mother's house?

Ans. I was living where we are living now at home with mother.

Question. Where were you when Mr. Cook and Mr. Booth came to the house, and if at home state what took place?

Answer. I was at home when they came in; they ate their dinner, and then Mr. Cook took him to lie down on mother's bed. That is all I remember at that time, for I went to school.

Question. State whether or not Mr. Cook introduced him to your mother or yourself?

Answer. He did not.

Question. What time did you return from school?

Answer. At recess.

Question. State how you knew who the man was?

Answer. I asked mother several times who he was and she said she did not know. After Mr. Cook came back from the depot, mother asked him again who he was and he told her and then I asked her again and she told me.

Question. State where you were on the 19th day of December, 1874, at the time the mortgage sued on in this action was signed; also who was in and about the house, and what took place that you saw or heard?

Answer. I was at home, I was there and mother was there; and we were alone till Mr. Cook came up with Mr. Crockett and Mr.
259 Gibson. Mr. Cook came in and asked me where mother was and I told him that she was in the dining room. He went in just as she was going from there into the hall. He said something to her, what it was I did not hear, but I heard her say that she could not and she would not; Mr. Gibson and Mr. Crockett staid outside and were not in the house at this time.

Question. Did he have the mortgage with him when he came up?

Answer. I did not know.

Question. Did you know then what your mother meant when she said she could not and she would not?

Answer. I did not know then, but I do know now.

Question. State what she meant?

(Question objected to because witness had said she did not know then, and she could not know now except from hearsay, and that is not knowledge.)

Answer. I suppose she meant she would not sign that mortgage.

(Answer objected to by plaintiff as incompetent.)

Cross-examination:

Question. State how long it was from the time you went to school and left Mr. Booth at the house, until you got back to that house at recess?

260 Answer. I left the house at about a quarter after one, and came home again at about three o'clock.

Question. State what time in the year this was?

Answer. About June or July.

Redirect examination:

Question by defendant. Were you at home the rest of the afternoon with your mother after coming home at recess after Booth went away?

Answer. Yes, sir.

Question. Were you present with your mother all the time after that?

Answer. Yes, sir.

Question. Did any conversation take place between your brother and Booth during that time?

Answer. No, sir.

IZETTA BARNETT.

Jane Cook recalled.

Question by plaintiff to Mrs. Jane Cook in further cross-examination. Who was the doctor you mentioned in your testimony, and where is he?

Answer. Dr. D. W. McCabe; he is dead.

Question. State whether you wrote your name on the bill of exchange Mr. William Cook got on the loan from the plaintiff?

261 Answer. All I really know is that he said he had got the money and had got his life insured.

(Question and answer objected to by defendant as incompetent.)

Question. State whether you wrote your name on that bill of exchange.

Answer. William Cook came up and told me to write my name on it. I wrote it or tried to. I suppose I wrote my name on the paper you refer to, but am not positive without seeing it.

Redirect examination:

Question by defendant. State whether or not you could read writing.

Answer. Very little; only just persons' hands that I am accustomed to.

JANE COOK.

Alfred Welsh.

Also ALFRED WELSH, being duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

Question by defendant. Where do you live?

Answer. In Wyandotte City.

Question. Were you acquainted with Alison Crockett in his lifetime?

Answer. I was.

262 Question. State whether or not you ever had any conversation with said Alison Crockett in relation to the signing and acknowledgment of the mortgage by William Cook and his wife, Jane Cook, to the plaintiff, & the mortgage sued on in this action; if so, state where and what that conversation was.

(Objected to by plaintiff as hearsay & incompetent.)

Answer. I had, in his office; we were talking about Cook's affairs, and about this mortgage. He said, "If I could have seen Mrs. Cook I would have had a talk with her about the contents of this mortgage, but I did not. I am sorry now I didn't, for the woman has been deceived all the way through." He said he did not explain the contents to her, because she had signed it before he saw her, and would have told her her land was in that mortgage. I did not tell this to Jane Cook before Mr. Cook's death nor till after the answer was filed in this suit.

Cross-examination by plaintiff:

Question. What relation by marriage or otherwise are you to the defendant Jane Cook?

Answer. I am her son-in-law.

ALFRED WELSH.

STATE OF KANSAS,
Wyandotte County, ss:

263 I, M. B. Newman, a notary public in and for said Wyandotte County, do hereby certify that the foregoing witnesses, viz, Edward L. Bartlett, Jane Cook, Izetta Barnett, and Alfred Welsh, were by me first duly sworn to testify the truth, the whole truth, and nothing but the truth; that their said depositions were reduced to writing by me; that the depositions were written and subscribed in my presence, and were taken at the time and place specified in the stipulation hereto attached.

In testimony whereof I hereto subscribe my name and affix my notarial seal this November 21st, 1877.

[NOTARIAL SEAL.] M. B. NEWMAN,
Notary Public.

Notary's fees: Depositions, 50 folios, at 15 cts., $7.50.

(Endorsed:) No. 1928. Opened Nov. 28, 1877, at the request of W. J. Buchan, sol'r for def't, by order of court. A. S. Thomas, clerk.

264 (Envelope indorsed on face:) Northwestern Insurance Co. vs. George P. Nelson et al. Depositions taken for defendants sealed up and directed by me, M. B. Newman, notary public. Increase costs, postage, 21 cts.

(Envelope indorsed on back:) No. 1928. These depositions sealed up and directed by me, M. B. Newman, notary public. Filed Nov. 24, 1877. A. S. Thomas, clerk.

1 ct. postage stamp cancelled.	10 ct. postage stamp cancelled.	10 ct. postage stamp cancelled.

A. S. THOMAS, ESQ.,

CLERK U. S. CIRCUIT COURT,

LEAVENWORTH,

KANSAS.

265 UNITED STATES OF AMERICA,
District of Kansas, ss:

At a term of the circuit court of the United States of America in and for the district of Kansas, begun and held at the city of Topeka, in the said district, on Monday, the 26th day of November, A. D. 1877. Present, Hon. C. G. Foster, district judge of the United States for the district of Kansas. At which term of said court the following proceedings among others were had before the Hon. C. G. Foster, judge:

Decree.

FRIDAY, *December 7th, A. D.* 1877.

THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, plaintiff,
vs.
GEORGE P. NELSON, AS ADMINISTRATOR OF the estate of William Cook, deceased. Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Nicholas McAlpine, Joseph Davis, The City of Wyandotte, Wilson Shannon, and Nelson Cobb, defendants. } No. 1928. In equity.

And now on this day comes The Northwestern Mutual Life Insurance Company, the plaintiff herein, by Clough and Wheat, its counsel, and also come Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Joseph Davis, The City of Wyandotte, and also George P. Nelson, as administrator of the estate of William Cook, deceased,
266 defendants herein, by W. J. Buchan, their counsel; and it appear-

ing to the court that defendant Wilson Shannon has died, suit is as to him only abated without prejudice; and it further appearing to the court that defendants Nicholas McAlpine and Nelson Cobb, as well as the said Wilson Shannon in his lifetime, were each duly served with a subpœna herein, and the said Nicholas McAlpine and Nelson Cobb, being now here duly called, come not, nor any one for them; and it further appearing to the court that the bill in this suit of the above-named plaintiff was on Monday, the sixth day of August, A. D. 1877, duly taken pro confesso as to and against the said Nicholas McAlpine, Nelson Cobb, and Wilson Shannon, in the lifetime of the said Wilson Shannon, it is therefore now by the court here ordered, adjudged, and decreed that the said bill and the allegations and averments therein contained be, and the same are now by the court here taken as true against the said Nicholas McAlpine and Nelson Cobb.

And thereupon this cause came on to be heard, and the same is now by the court heard on the bill, answers, replication, depositions heretofore filed in this suit, and the exhibits mentioned in and annexed to the depositions taken herein before H. C. Hollister, an examiner of this court, and the admissions mentioned and stated by the said Hollister in the testimony by him reported herein; the depositions first aforesaid include those taken before M. B. Newman as well as those taken before before said H. C. Hollister.

267 And the court having heard the evidence and arguments of counsel, finds for the plaintiff except as hereinafter stated, and the court finds that the bond and mortgage in said bill mentioned came due before the commencement of this suit, because of the non-payment of interest, and also because of the non-payment of taxes levied and assessed on the tracts of land in said bill mentioned, which interest and taxes became and were overdue, and the said taxes were by law made due and payable before this suit was commenced; and the court with the assent of defendants fixes and determines the amount of the solicitor's fee in said mortgage mentioned for said plaintiff in this suit at the sum and amount of five hundred dollars.

And the court further finds that the sum of eight thousand three hundred and ninety-two dollars is overdue and owing to said plaintiff from defendant George P. Nelson, as administrator of the estate of William Cook, deceased, on and because of the matters in said bill mentioned, including the amount due on the bond and mortgage in said bill mentioned, and for and because of the sums of money paid by said plaintiff to redeem said tracts of land from tax sales, and to pay taxes assessed and levied thereon as alleged in said bill, and for the solicitor's fee aforesaid.

And the court further finds that said plaintiff has a lien on the several lots in the city of Wyandotte in said bill and mortgage mentioned, to the amount of and for said sum of eight thousand three hun-

268 dred and ninety-two dollars ($8,392$\frac{00}{100}$), with interest thereon from this time until paid, at the rate of twelve per cent. per annum.

And the court further finds for defendant Jane Cook as to the first tract of land in said bill and mortgage described, and that said mortgage is not a lien thereon; that is, the tract of land therein mentioned as containing sixty (60) acres.

And thereupon, upon consideration thereof, it was and is now by the court here ordered, adjudged, and decreed as follows, viz:

That said George P. Nelson, as administrator of the estate of William Cook, deceased, within six months from this time pay to said plaint-

iff, The Northwestern Mutual Life Insurance Company the sum of eight thousand three hundred ninety-two dollars ($8,392\frac{00}{100}$), with interest thereon at the rate of twelve per cent. per annum, from this time until paid, and also its costs in this suit expended, and that unless the defendants in this suit, or some or one of them or some person or persons, shall and do within six months from this time pay to said plaintiff said sum of eight thousand three hundred and ninety-two dollars ($8,392\frac{00}{100}$), with interest thereon at the rate aforesaid, from this time until paid, and the costs aforesaid, that the following described tracts of land, situate, lying, and being in the county of Wyandotte, in the State of Kansas, namely, lots number seven (7), twelve (12), sixteen (16), seventeen (17), eighteen (18), nineteen (19), and twenty-two (22),
269 in block number one hundred and thirty-two (132), in the city of Wyandotte, and lot number three (3) in block number one hundred and thirty-one (131), in the city of Wyandotte, be sold without appraisement thereof and without redemption therefrom at the court-house in the city of Wyandotte in the county of Wyandotte, in the State of Kansas, in which the district court in said county of Wyandotte shall be usually held, after thirty days' notice of the time and place of such sale shall first have been given by the master hereinafter named, by publication thereof in a newspaper printed in said county, if any be then printed therein; if none be then printed in said county, then such notice shall be published in a newspaper of circulation therein.

And Henry M. Herman, one of the masters in chancery of this court, is hereby appointed a master of this court to execute this decree and to sell said tracts of land, that is, the lots aforesaid so ordered to be sold as aforesaid, and he is ordered and directed to appropriate and dispose of the proceeds of such sale by paying first the costs aforesaid and of executing this decree and of making such sale; second and next, by paying such taxes and penalties thereon as shall then be due and unpaid against such of lots as he shall so sell; next and third, by paying to said plaintiff, The Northwestern Mutual Life Insurance Company aforesaid, the aforesaid sum of eight thousand three hundred and ninety-two dollars ($8,392.00) with interest thereon at the rate aforesaid,
270 from this time until paid, and that he bring the remainder of such proceeds, if any there be, into this court for distribution and application thereof, and that said Henry M. Herman as such master make report of such sale and await confirmation thereof by this court before making a deed for any of the lots aforesaid, and that the defendants herein and every of them, and every person claiming by, from, through or under them, or any or either of them, since the commencement of this suit, be and they are hereby forever barred and foreclosed of and from all and any right and equity of redemption and other right whatever upon, in, or to the tracts of land, the lots so ordered sold as aforesaid, or any or either of them, from and after such sale thereof, and that said defendants, and each of them, and all persons claiming from or under them or any or either of them since th ecommencement of this suit, be, and they are hereby ordered, required, adjudged and decreed to deliver possession of such of said tracts of land, the lots aforesaid, as shall be so sold as above described, to the grantee or grantees in any deed made in pursuance of such sale so soon as demand therefore shall be made.

And it is now by the court here further considered, ordered and adjudged that John H. Brown be, and he is hereby appointed receiver in this suit, and he is required to execute and undertaking to said plaintiff and to defendants, George P. Nelson, as such administrator, and Jane Cook, to the effect that he will faithfully discharge the duties of

271 receiver in this action and obey the orders of the court herein; and he, said John H. Brown, is hereby authorized, ordered and directed as such receiver to take and keep possession of the property, the several lots above mentioned, and the buildings and improvements thereon, and to receive and collect the rents, use, issues and profits thereof and the defendants herein, and all persons claiming under them, or any or either of them since the commencement of this suit, be and they are hereby ordered, adjudged and decreed to forthwith attorn and surrender possession of said lots, the tracts of land so ordered sold as aforesaid, to said John H. Brown as such receiver, and he is hereby authorized and directed to prosecute such suits as may be necessary to collect such rents, and to report to this court any failure of any of the defendants herein, or of any person so claiming under them, said defendants, or any or either of them, to surrender such possession to him.

And it is further ordered that the said receiver pay such taxes as have been levied or assessed or come due for or during the year A. D. 1877, and such as may hereafter, whilst he is such receiver, be levied or assessed and come due on or against the lots ordered sold as aforesaid, with and out of such moneys as he, as such receiver, shall or may collect or receive; and said receiver is directed to report to this court, at the first of each term thereof, his doings as such receiver, and the
272 rents and monies by him collected and received, and what he shall have done therewith.

And this suit is reserved for such other and further orders, adjudications and decrees as shall or may be or become proper to make or render herein, in relation to said receiver from time to time, and the sale of said lots ordered to be made as aforesaid.

And thereupon said plaintiff now here in open court prays for an appeal, and appeals to the Supreme Court of the United States from this the above and foregoing decree and from the decisions of the above named circuit court shown by this said above and foregoing decree, which appeal of said plaintiff is now by the circuit court here granted and allowed, and the clerk of this circuit court is hereby directed to forward a transcript of the record herein and copies of the evidence above mentioned to the said Supreme Court.

And it is now by the court here further ordered that the original depositions and the above mentioned exhibits be sent up to said Supreme Court, in addition to the copy of the record, that the above mentioned mortgage and the several signatures of defendant Jane Cook to her depositions and her signature to the mortgage aforesaid, and her signature on the back of the Exhibit No. 3, the bill of exchange in said depositions mentioned, may be inspected by said Supreme Court, said deposition and exhibits to be by the clerk of this court carefully
273 retained until he sends the same with such transcript to the clerk of said Supreme Court, then said clerk of said Supreme Court to carefully keep the same subject to the order of that Supreme Court until decision and determination of said appeal by that court, then the clerk thereof to return the same to the clerk of this circuit court.

And the bond of William Booth and George W. Veale, now by them given and entered into herein in the sum of five hundred dollars to the defendants herein, to the effect that the said plaintiff shall prosecute its said appeal to effect, and if it fail to make its plea good shall answer all costs, is now by the court here accepted and approved as good and sufficient security to that effect as the security required by law in such case.

C. J. FOSTER, *Judge.*

275 And on this day, to wit, December 7th, 1877, the complainant, by its counsel, filed in the clerk's office of said court its undertaking on appeal in said entitled suit, which said undertaking on appeal is in the words and figures following, to wit:

Appeal bond.

UNITED STATES OF AMERICA,
District of Kansas, ss.:

In the circuit court of the United States for the district of Kan'as.

THE NORTHWESTERN MUTUAL LIFE INSURance Company, plaintiff,
against
GEORGE P. NELSON AS ADMINISTRATOR OF THE estate of William Cook, deceased, Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Nicholas McAlpine, Joseph Davis, The City of Wyandotte, and Nelson Cobb, defendants.

Know all men by these presents that we, William Booth and George W. Veale, of the city and county of L'avenworth, in the State of Kansas, are held and firmly bound unto the above-named defendants, George P. Nelson as administrator of the estate of William Cook, deceased, Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Nicholas McAlpine, Joseph Davis, The City of Wyandotte, and Nelson Cobb, in the sum of five hundred dollars to be paid to them the
276 said defendants, appellees, for the payment of which well and truly to be made we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 7th day of December, A. D. 1877.

Whereas the Northwestern Mutual Life Insurance Company, the plaintiff in the above-entitled suit, has prosecuted an appeal to the Supreme Court of the United States at the city of Washington, to reverse the decree rendered in the above suit by the circuit court *court* of the United States for the district of Kansas;

Now, therefore, the condition of this obligation is such that if the said appellant The Northwestern Mutual Life Insurance Company shall prosecute its appeal to effect, and if it fail to make its plea good shall answer all costs, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

WM. BOOTH. [SEAL.]
GEO. W. VEALE. [SEAL.]

The above and foregoing bond, and the sureties who have executed the same, are accepted and approved by me as good and sufficient security on the appeal in said bond mentioned, this 7th day of December, A. D. 1877.

C. G. FOSTER, *Judge.*

(Endorsed:) No. 1928. The Northwestern Mutual Life Insurance Company vs. George P. Nelson as adm'r, &c., et al. Undertaking on appeal. Filed Dec. 7, 1877. A. S. Thomas, clerk.

277 And on this day, to wit, December 11, 1877, the receiver heretofore appointed herein filed in the clerk's office of said court his bond as such receiver, which said bond is in the words and figures following, to wit:

Receiver's bond.

Know all men by these presents that we, the undersigned, John H. Brown, of Wyandotte City, Kansas, as principal, and William Booth, of Leavenworth City, Kansas, and Geo. A. Eddy, of Leavenworth, Kansas, as sureties are held and firmly bound unto The Northwestern Mutual Life Insurance Company, and George P. Nelson as administrator of the estate of William Cook, deceased, and Jane Cook, and to each of them separately and severally in the sum of fifteen hundred dollars lawful money of the United States, to be paid to them respectively, for which payment well and truly to be made, we and each of us bind ourselves jointly and severally firmly by these presents. Dated this 7th day of December, A. D. 1877.

Whereas the above named John H. Brown was on this seventh day of December, A. D. 1877, in and by the circuit court of the United States for the district of Kansas appointed receiver in a certain suit then pending therein, wherein The Northwestern Mutual Life Insurance Company is plaintiff, and said George P. Nelson as administrator of the estate of William Cook, deceased, and said Jane Cook and others are defendants;

Now the condition of this the above obligation is such that if the said John H. Brown shall faithfully discharge the duties of receiver in said suit, and obey the orders of the court therein, then this obligation
278 to void; otherwise to be and remain in full force effect.

JOHN H. BROWN. [SEAL.]
WM. BOOTH. [SEAL.]
GEO. A. EDDY. [SEAL.]

I approve of the above bond and the sureties thereto this 11th day of December, A. D. 1877.

C. G. FOSTER, *Judge.*

(Endorsed:) No. 1928. The Northwestern Mutual Life Insurance Company vs. George P. Nelson, adm'r, &c., and others. Receiver's bond. Filed Dec. 11, 1877. A. S. Thomas, clerk.

279 ÆTNA INSURANCE COMPANY OF HARTFORD,
Wyandotte, Kans., June 1st, 1878.

To the honorable circuit court of the United States of America for the circuit of Kansas.

The undersigned, receiver appointed by your honorable court in a certain case wherein The Northwestern Mutual Life Insurance Company is plaintiff and P. Nelson, adm'r, et al., are defendants, respectfully submitt the following statement, showing the amount of rents collected, from whom, and for what time, also amount paid for repairs on buildings and side-walks, from December 7th, '77, to June 1st, '78.

John Gibson,	from Dec. 7th, '77,	to December 28, '77	.....	7 50
Peter Keager,	" Dec. 7th, '77,	" December 28, '77	.....	9 00
C. W. Twist,	" Dec. 7th, '77,	" December 28, '77	.....	12 00
Solomon Apple,	" Dec. 7th, '77,	" Dec. 28, '77	.....	7 50

C. W. Twist, from Dec. 28th, '77, to January 28, '78	15 00
Peter Keager, " " 28, '77, " " 28, '78	12 00
John Gibson, " " 28, '77, " Jan'y 28, '78	10 00
John Gibson, " January 28, '78, to Feb'y 28, '78	10 00
George Bishop, " " 28, '78, " " 28, '78	10 00
C. W. Twist, " January 28, '78, " Feb'y 28, '78	15 00
Peter Keager, " January 28, '78, " Feb'y 28, '78	12 00
Mrs. Reiley, " Dec. 7th, '77, to Febr'y 28, '78	8 00
John Gibson, from February 28th, '78, to March 28, '78	10 00
C. W. Twist, from Febr'y 28, '78, to March 28, '78	15 00
Peter Keager, from Febr'y 28, '78, to March 28, '78	12 00
George Bishop, from Febr'y 28th, '78, to March 14th, '78	5 00
John Stark, from March 28th, to April 28th, '78	15 00
John Gibson, from March 28th, '78, to April 28th, '78	10 00
Peter Keager, from March 28, '78, to April 28, '78	12 00
Total receipts	207 00

280 Disbursements:

Paid on account of taxes, as per voucher	140 00
Paid for repairs on sidewalk	4 50
Paid on building (repair)	2 50
Total paid out	147 00
Balance on hand	60 00

There is still due and unpaid taxes which I will pay as soon as more money is collected, unless otherwise ordered.

There are two (2) parties now who were in possession, and now occupying premises covered by the judgment in favor of the plaintiff, who have not paid rent.

Respectfully submitted.

JOHN H. BROWN, *Receiver.*

281 *Tax receipt.*

$147.00.] TREASURER'S OFFICE,
WYANDOTT COUNTY, KANSAS,
Wyandott, June 4, 1878.

Received of J. H. Brown, receiver, the sum of one hundred and forty-seven $\frac{00}{100}$ dollars in full of all the taxes, as per tax roll, on the following described real estate and personal property in Wyandott City for A. D. 1877:

	Lots.	Block.	Valuation.	Lots.	Block.	Valuation.	Tax. $	Cts.
Amount of taxes charged on each $100.00 valuation for A. D. 1877	.....	.....	.....	3	131	275	19	35
	.....	.....	.....	7	132	300	21	00
	.....	.....	.....	12	"	250	17	50
	.....	...	.....	16	"	675	47	25
	.....	.....	.....	19	"	500	35	00
						2,000	140	00

STATE AND COUNTY TAXES.

State taxes (aggregate)	$ .52½
County general fund	.95
County bond interest fund	.80
County asylum poor fund	.03½-10
Judgment, Garrett et al	.04-10

CITY OF WYANDOTTE TAXES.

General fund	.50
General improvement fund	.50
Bond interest fund	.2-20
School bond sinking fund	.35
School teachers wages and incidental	.75
To pay judgment of J. K	.05
Special tax, curbing, guttering, paving, macadamizing	

PERSONAL PROPERTY.

Total	.....	....
Rebate	.....	....
December penalty	7	00
March penalty	.....	....
June penalty	.....	....
Advertising and listing	.....	....
	147	00

E. S. W. DROUGHT,
Treasurer of Wyandott County, Kansas,
By WILLIAM ALBRIGHT,
Deputy

282 (Endorsed:) No. 1928. The Northwestern Mutual Life Ins. Co. vs. George P. Nelson et al. Report of receiver. Filed June 6, 1878. A. S. Thomas, clerk, by J. N. Strickler, deputy.

283, 284 UNITED STATES OF AMERICA,
District of Kansas, ss:

I, the undersigned, A. S. Thomas, clerk of the circuit court of the United States for the district of Kansas, hereby certify that the above and foregoing is a full, true, and complete transcript of the record of the therein entitled suit of The Northwestern Mutual Life Insurance Company against George P. Nelson, as administrator of the estate of William Cook, deceased, Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Nicholas McAlpine, Joseph Davis, the City of Wyandott, Wilson Shannon, and Nelson Cobb, including a copy of the record filed in said suit in said court on the removal thereof from the State court to said circuit court, and a copy of the process, pleadings, orders, and decree in said suit in said circuit court, and also including copies of all the proofs, motions, notices, affidavits and papers filed in said suit in said circuit court.

And I further certify that I herewith transmit and send to the clerk of the Supreme Court of the United States the original depositions and exhibits mentioned in the final decree in said suit as thereby ordered and directed, which exhibits and depositions are hereto attached.

In witness whereof I, the said A. S. Thomas, clerk of said circuit court, hereto set my hand and affix the seal of said circuit court this 27th day of August, A. D. 1878, at my office in Topeka, in said district.

[SEAL.]

A. S. THOMAS, *Clerk*,
By J. N. STRICKLER, *Deputy.*

285 The United States of America to George P. Nelson, as administrator of the estate of William Cook, deceased, Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Nicholas McAlpine, Joseph Davis, the City of Wyandotte, and Nelson Cobb:

Whereas The Northwestern Mutual Life Insurance Company has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the district of Kansas, in a suit therein, wherein it, The Northwestern Mutual Life Insurance Company, was plaintiff, and you were defendants, said suit having been abated as to Wilson Shannon because of his death, and said plaintiff has filed the security required by law;

You are, therefore, cited and admonished to be and appear at and before the Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to and to answer to said appeal, and to do and receive what may appertain to jus-
286 tice to be done in the premises.

Witness the Hon. C. G. Foster, one of the judges of said circuit court, this seventh day of December, A. D. 1877.

C. G. FOSTER, *Judge.*

I, the undersigned, W. J. Buchan, as counsel for the above named George P. Nelson, as administrator of the estate of William Cook, deceased, Jane Cook, John Gibson, Philip Kaiser, Lucretia Riley, Charles W. Twist, Joseph Davis and the City of Wyandotte, named in the above and foregoing citation, hereby acknowledge that the same was this seventh day of December, A. D. 1877, served on me in Topeka, in the State and district of Kansas, by delivery of a copy of said citation to me personally.

W. J. BUCHAN,
Counsel for Def'ts.

287 The above and foregoing citation was served on me, the therein named Nelson Cobb, by delivery of a copy thereof to me personally in Topeka, in the State of Kansas, this seventh day of December, A. D. 1877.

NELSON COBB.

UNITED STATES OF AMERICA,
District of Kansas, ss:

I, the undersigned, James S. Gibson, being first duly sworn, do on oath depose and say that I did at the city of Wyandotte, in the above mentioned district of Kansas, on the twentieth day of December, A. D. 1877, serve the above and foregoing citation on the Nicholas McAlpine in said citation mentioned, by then and there delivering to him, the said Nicholas McAlpine, personally, a copy of said citation, which service I so made for and on behalf of The Northwestern Mutual Life Insurance Company.

JAS. S. GIBSON.

Subscribed in my presence and sworn to before me, the undersigned, a notary public in and for the county of Wyandotte, in the State of Kansas, this twentieth day of December, A. D. 1877.

288 In witness whereof I hereto set my hand and affix my notarial seal the day and year last aforesaid.

[SEAL.] F. B. ANDERSON,
Notary Public.

(Indorsed:) No. 1928. The N. W. Mutual Life Ins. Co. vs. Nelson, adm'r, etc., et als. Citation. Filed Dec. 22, 1877. A. S. Thomas clerk.

289 In the circuit court of the United States for the district of Kansas

THE NORTHWESTERN MUTUAL LIFE INS. CO.
vs.
GEORGE P. NELSON, ADM'R, &C. } 1928.

The Northwestern Mutual Life Ins. Co. to A. S. Thomas, clerk, Dr.

To making transcript for Supreme Court U. S.....	$61 45
" paid express charges.....	2 35
	$63 80

Received payment of the Northwestern Mutual Life Insurance Company.

A. S. THOMAS, *Clerk*,
By J. N. STRICKLER,
Deputy.

(Indorsement on cover:) No. 459. The Northwestern Mutual Life Insurance Company, appellant, vs. George P. Nelson, adm'r of William Cook, dec'd, Jane Cook, et al. Kansas C. C. U. S. Filed 3rd September, 1878.

DEC 29 1869

Supreme Court of the United States.

No. 185.

THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY,

Appellant,

vs.

GEORGE P. NELSON, Administrator, &c., JANE COOK, *et al.*

Appeal from the Circuit Court of the United States for the District of Kansas.

APPELLANT'S BRIEF.

D. G. HOOKER,
Counsel for Appellant.

Burdick & Armitage, Printers.

Supreme Court of the United States.

No. 185.

THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, *Appellant,*

vs.

GEORGE P. NELSON, Administrator, &c., JANE COOK, *et al.*

Appeal from the Circuit Court of the United States for the District of Kansas.

APPELLANT'S BRIEF.

The suit, in which this appeal was taken, was commenced in the District Court of Wyandotte County, Kansas, and was subsequently removed, on petition of appellant, to the Circuit Court of the United States.

The Northwestern Mutual Life Insurance Company, appellant, filed its bill in the court below for the foreclosure of a mortgage, alleged to have been executed by William Cook and Jane Cook, his wife, Dec. 10th, 1874, to secure the bond of William Cook to said company, of even date with the mortgage, on certain lots in the city of Wyandotte, and a tract of

sixty acres of land outside the city, all in the county of Wyandotte. (For bill, see record, pp. 19–28).

Jane Cook filed an answer in which she admits the execution of the bond, but "denies the execution of the mortgage as set forth in said bill of complaint." Her account of the execution of the mortgage, as given in her answer, is as follows: "This defendant alleges that on or about the time mentioned in 'the plaintiff's bill as the time when said bond and mortgage 'therein set out were executed, the said William Cook, her hus- 'band, requested her (this defendant) to sign a mortgage to the 'plaintiff as mortgagee, to secure a loan of money to be loaned 'by the plaintiff to him, said William Cook, her husband, and 'informed her that such mortgage was upon certain lots of his, 'in Wyandotte City, and upon this defendant asking him, her 'said husband, to let her read the said mortgage, he, her said 'husband, refused to permit this defendant to read the same. 'This defendant then asked whether said mortgage covered her 'land outside the city, and was told by her said husband, that 'it did not, but this defendant refused to sign the same, where- 'upon her said husband took hold of this defendant, and by 'physical force seated this defendant in a chair at the table and 'put a pen in her hand, and placing his hands on this defend- 'ant's shoulder and arm, commanded and compelled her to 'write her name, which she did and not otherwise, and not of 'her own free will and accord, but that she was compelled to 'sign said mortgage by force and threats of her said husband, 'and that the same was signed under duress, by actual force, 'physical coercion, and the use of violence and compulsion of 'her said husband, and through and by such duress, force, 'physical coercion, and not otherwise, she was made to sign 'such mortgage, and this defendant avers and alleges that such 'mortgage is not her deed.

"And this defendant further answering, says that afterwards, 'when Alison Crockett, the officer certifying to the acknowledg- 'ment of said mortgage came into the room where this defend-

'ant was, to take such acknowledgment, said Crockett informed 'defendant that said mortgage was upon some city lots belong-'ing to her husband and did not cover her land. That defend-'ant believed said declaration to be true, that said Crockett did 'not read said mortgage to defendant, or otherwise explain the 'contents thereof, except as herein stated; that defendant did not 'read said mortgage, because she believed the declaration of 'said Crockett to be true, and feared to offend her husband by 'refusing to acknowledge the signature to said mortgage as 'hers."

She states in her answer (as the fact is) that the sixty-acre tract embraced in the mortgage was her separate property, owned by her before her marriage to William Cook.

It is also averred in the answer, "that the said Alison 'Crockett was the agent of the plaintiff herein, in loaning 'money to her said husband, William Cook, and taking said 'mortgage in security therefor; and when he took said acknowl-'edgment and made the representations aforesaid, that this 'defendant's land was not included in said mortgage, he was 'acting as the agent of the plaintiff herein, and that he then 'had full knowledge and well knew that the land above 'described (the sixty-acre tract) was the property of this defend-'ant and was included in said mortgage." (Record, pp. 36—38.)

To this answer the general replication was filed. (Record, p. 41.)

George P. Nelson, administrator of the estate of said William Cook who died before the commencement of the suit, and other defendants, answered, but their answers are immaterial, as no questions are involved in this appeal except such as arise upon the answer of Jane Cook. (Record pp. 35 and 38—40.)

The decree is in accordance with the prayer of the bill, except as to the sixty-acre tract, in respect to which it contains this paragraph: "And the court further finds for defendant, Jane Cook, as to the first tract of land in said bill and mortgage described, and that said mortgage is not a lien thereon,

that is, the tract of land therein mentioned as containing sixty (60) acres;" and the decree, in describing the property to be sold, specifies the city lots, but omits the sixty-acre tract. As a decree of foreclosure and sale it is limited, in all respects, to the city lots. (Record, pp. 115–118.)

The following is an abstract of the testimony pertaining to the defense of Mrs. Cook:

She is offered as a witness in her own behalf.

The mortgage, Ex. 1, being shown her, she says, in answer to the question whether she signed it: "That is my name writ-'ten to that mortgage."

"Q. State how and under what circumstances your name 'was written to that mortgage; state fully?

'A. Mr. Cook came in and wanted me to sign a mortgage. 'I wanted to know what the mortgage was; he said it was on 'the buildings on this street. I told him I did not wish to sign 'the mortgage, and could not sign it; it was something I never 'believed in.

'Q. Did you, or did you not, sign the mortgage at that 'time; and if not, what was done?

'A. Well, when I refused to sign it, he took me and set me 'in a chair, and put the pen in my hand, and held my hand and wrote my name there."

She says no one was in the room at the time, except herself and husband; that Alison Crockett, the acknowledging officer, and one of the subscribing witnesses to the execution of the mortgage, and John Gibson, the other witness, were not in the house; that they came up with her husband, and stayed out in the yard.

"Q. State whether, or not, said Alison Crockett came into 'the room where you and your husband were; and, if yes, state 'when and what he said, if anything, to you?

'A. After the mortgage was signed, he came in; he asked 'me, 'where is the papers; are you going to sign?' Mr. Cook 'spoke up and said, 'it is already signed.' He asked me, then,

'if I signed it. I did not say anything. Mr. Cook stood 'between me and Mr. Crockett; he as much as told me to keep 'my mouth shut, by his motions; he looked me right in the 'face.

'Q. What, if anything, did you say to Mr. Crockett, and 'what reply did he, Crockett, make to you?

'A. Well, Mr. Crockett said, 'Mr. Cook, how many lots are 'there in this place?' And from that I said, 'Mr. Crockett, what 'has this man been doing?' and he said, 'didn't he tell you?' 'and I said no. And I then asked him, 'I would like to know 'something about this; has he mortgaged this place where we were living?' Then he said, first, 'didn't Mr. Cook tell you?' I 'said, no. Then he said, 'I would like to own this place my-'self;' and from that I thought it was mortgaged; and then I 'said, 'I would like to know what he is doing, because I own 'property, and I have children;' and he said, 'Mrs. Cook, it is 'nothing to injure you; it is this property down on Minnesota 'Avenue.'

'Q. What property on Minnesota Avenue did you under-'stand Crockett referred to?

'A. These frame buildings and lots.

'Q. State what was said by yourself or Crockett, in rela-'tion to the sixty-acre tract of land—your individual property 'at that time?

'A. It was not mentioned at all."

She testifies that she was the owner of the sixty-acre tract; that Alison Crockett did not tell her it was included in the mortgage; "he said it was not touching my property; it was 'not touching anything that belonged to me"; that she did not know it was included, and that she would not have signed the mortgage if she had known it. In answer to the question why she refused to sign the mortgage on the lots, she answers, "for 'the reason, I wanted to hold it, because he had already spent 'fifteen thousand dollars of money belonging to me.

'Q. State whether he had promised to give you that in place of that?

'A. Well, he had said he wanted to, after he made the 'mortgage, that he wanted to settle up some debts here. That 'was all I knew about his business.

* * * * * * *

'Q. State, whether or not, you signed the mortgage, as the 'same appears, of your own free will and accord?

'A. No, sir; I did not.

'Q. State, whether or not, your name was written to said 'mortgage, as before described by you, by any use of force or vio-'lence by your said husband; and if so, what?

'A. Well, he I suppose threatened; he said if I did not 'sign that mortgage he would come off down town and go to 'drinking till he killed himself; those are just the words he 'said; and then from that he said he was going to compel me 'to sign it, and then, as I say, he forced me into the chair; he 'took me and set me in the chair and held me there, and took 'the pen and put it in my hand and guided my hand and 'wrote my name there.

'Q. State whether, or not, Crockett read or explained the 'contents of said mortgage to you?

'A. No, sir; he did not. I wanted Mr. Cook to let him 'come in and explain it to me. He said, 'I am telling you the 'truth; don't you believe me?"

She says she never received any of the money, or any benefit from the money obtained on the loan.

On cross-examination she says she had five children by her former husband, James Barnett, two of whom were living with her at the time the mortgage was given, and that when her name was written to the mortgage, "the youngest girl was in the house, but not in the room; she knew nothing of what was going on;" that she acted as administratrix of James Barnett's estate, and as guardian for the children; that she can write, but not well enough to write a letter; can read writing, and

can use a pen well enough to sign her name to anything; that she learned when she was young; that she did not read the mortgage, and did not ask Alison Crockett to read it; that John Gibson was not in the room when anything she had mentioned in her examination-in-chief was said; that "he came in with Mr. Crockett, and Mr. Crockett gave him the pen, and said, 'here, John, you can sign your name, and go.' All I did say before Gibson, was, Mr. Crockett asked me if I signed it, and I did not answer him," [that "as soon as he signed his name he started right out; he did not stop at all"; that Crockett "did not stay any time. As soon as I commenced asking him questions, Mr. Cook said, 'come, let's go'; and they went right out;" that James Barnett left about 220 acres of land.

'Q. You had the aforesaid sixty acres set off to you in the 'fall of 1874, a little while before that mortgage was made, did 'you not?

'A. Well, I don't know; it was set off twice; the first time 'was two or three years before I married Mr. Cook. The last 'time it was commenced and in suit, before I knew anything 'about it, and I did not know who had meddled themselves about it." (Record, pp. 96–98.)

On *re-direct examination* she says, the sixty-acre tract was left her by her former husband, James Barnett; that she first learned it was included in the mortgage after her husband's death and after this suit was brought. (Record, pp. 98—99).

After the witness had signed her deposition, she gave this further testimony:

"Q. (By plaintiff, after the witness had signed her name 'above this line.) Mrs. Cook, please state how it is that your 'name is so well written on said mortgage?

'A. Well, I can tell you how. After he got through, he 'took the pen and straightened the places, and he said, a few 'days afterwards, he did that well. I did not know how it was 'written, because I was compelled to do the thing and did not 'know how it was done, and never looked: even after Mr.

'Crockett took up the pen, he could not use it, and said he 'would have to come to his office before he could sign his name. 'I do not know whether he signed it there in the house, or 'after he came down.

'Q. You said your husband held your hand whilst your 'name was written to that mortgage where your name is writ-'ten thereto; did you mean to say that?

'A. Yes, sir; I do. I would not tell you so, if he did not.

'Q. Do you mean to say that your husband, William 'Cook, held your hand whilst the words, Jane Cook, on said 'mortgage,—at the end thereof—were written?

'A. Yes, I do; and I wish to God there had been a person 'present to witness it. I believe in the Almighty myself. To 'take a weak, frail woman and sit her down in a chair and com-'pel her to sign her name, is the most ridiculous thing a strong' 'healthy man could be guilty of.

'Q. How long after your name was written on that mort-'gage, was it before John Gibson and Alison Crockett came 'into the room where you and your husband were?

'A. They came in, a few minutes after.

'Did you say anything to either of them, as to how your 'name had been written on said mortgage?

'A. No, I did not. I couldn't say anything. John Gibson 'could tell you how I looked.

'Q. Did your husband stay there as much as five minutes 'after Gibson and Crockett came into the room?

'A. I couldn't tell how many minutes, or anything about 'it.

'Q. Tell me, whatever was said by any person after Gibson 'and Crockett came into the room, before Gibson left?

'A. All that was said, Crockett stood and looked at the 'paper a while; then he said, "Mrs. Cook, did you sign this 'paper?" Mr. Cook stood between me and Crockett, and 'Crockett did not turn around to me—he had his face towards 'the paper—and Mr. Cook said, she signed it. Crockett took

'the pen and could not sign his name, and handed it to Gibson, 'and said, "John, see if you can." John signed his name, and 'he then said, "You can go now." (Record, pp. 99–100.)

To rebut the testimony of Mrs. Cook, appellant offered the following:

Cushman Cunningham, an expert in hand-writing, testified that, in his opinion, the signature, "Jane Cook," to her deposition, the signature "Jane Cook," on the back of the bill of exchange, Ex. 3, and the signature "Jane Cook," on the mortgage, Ex. 1, were written by the same person. After examining the signature "Jane Cook," on the mortgage, with a magnifying glass, he says he thinks there have been no changes made in it since it was first written; that if any person had taken a pen and straightened any place or part of that signature, he would be able, with the examination he had given it, to detect it, and that he could not detect any such thing; that there was no appearance of its having been altered in any respect, since it was first written. Says he thinks it would not be possible for another person to have taken hold of her hand, with a pen in it, and therewith have written it in the manner it is written, so as to resemble her genuine signature, and that another person could not, by such means, have written that signature. (Record, pp. 100–101.)

George H. Hyde, an expert, after examining the same signatures, says: "They were all written by the same person undoubtedly;" that if Mr. Cook had written the signature to the mortgage, by taking hold of her hand, he could tell that it had not been written by her voluntarily; that it seems to be her voluntary writing; that he had examined it through a magnifying glass, and sees no signs of its having been touched up at all, thinks if it had been written otherwise than by her voluntarily, it would not present the appearance it does. (Record, pp. 103–104.)

J. M. Greybill, also an expert, after examining the same signatures, says he thinks they were all written by the same person; that, in his opinion, the signature to the mortgage was written by her voluntarily; that he had examined it through a magnifying glass, and sees no evidence of its having been touched up; that "it is clear that her signature to that mortgage is as it was first written;" and that if it had been written otherwise than by her voluntarily, it would not present the appearance it does. (Record, pp. 104–105.)

William Booth, appellant's State agent for Kansas, testifies, that the consideration of the bond and mortgage was five thousand dollars; that $4,781.65 of it were given to William Cook and Jane Cook, as shown by the bill of exchange, Ex. 3, and that the balance, $218.35, was applied to the payment of a premium on a policy of insurance, on the life of William Cook, as directed by him in his letter to the president of the Company (Ex. 4).

"Q. State whether, previous to the time of the execution 'of said bond and mortgage, you had any conversation with 'the defendant, Jane Cook, respecting the matter of such mort-'gage; and, if so, when and where, and what was that conversation?

'A. Some time after the application shown by the above 'mentioned exhibit No. 8, was made, and previous to the exe-'cution of said bond and mortgage, I went to Wyandotte City, 'and saw both William Cook and Jane Cook. I first met Wil-'liam Cook, and he took me around to see the property. I was 'somewhat unwell, and he took me around with a horse and 'buggy. He took me to his house to take dinner. After din-'ner I was still unwell, and laid down a while at his residence. 'Whilst I was there at his residence, that time, Jane Cook 'came into the room where I was after dinner. She told me 'she was very anxious to help Mr. Cook out of his difficulty—'debts, that were pressing him—and was willing to mortgage

'her property, left to her in her own name. She told me that 'it was a very valuable piece of property. She said they had 'sold off part of what had been left her, and told me the prices 'they had got for it. This conversation was about the sixty-'acre piece of land described in said mortgage. I had been to 'see the piece of land before dinner with William Cook. 'Whilst I was there, that time, we talked about my having 'been to see said sixty-acre piece of land. Said Jane Cook took 'part in that conversation. At that time she said she would not 'sell that piece of property, but she was willing to mortgage it, 'to help her husband out of his financial difficulties."

He says he received the bond and mortgage about the 20th of December, 1874, and sent them by express to the home office of the company at Milwaukee, as he thinks, on the same day he received them. (Record, pp. 101—103.)

Rebutting testimony on behalf of defendant, Jane Cook.

Edward L. Bartlett, an attorney, testifies that in the spring or summer of 1874, William Cook came to him with one of the printed blank applications for a loan from the plaintiff, together with a list of lots in the city of Wyandotte, on which he said he desired to place a mortgage for plaintiff's benefit, together with his wife's farm, the description of which he did not know, but asked him (witness) to get it from the records, saying that Mr. Booth had requested him to have himself and two other responsible citizens view and make a fair appraisement of the real estate and buildings separately in writing on the blank; that he and Byron Judd and L. H. Wood, made the appraisement, and that he filled up the other portions of the blank, at Mr. Cook's direction, and gave it back to him; that this was unsatisfactory for some reason, and he prepared a new application, the same parties appraised the property anew, and shortly after, Mr. Cook asked him to make an abstract of title to the lots and land; that Judge Brewer examined it, reported that a

partition suit in the district court was necessary to perfect the title of Mrs. Cook in the land; that he explained this to Mr. Cook, and at his request Mr. Scroggs and himself, who were partners, brought a suit in partition against the heirs of James Barnett, deceased, for the whole tract, which suit was terminated and partition made as prayed for; that a transcript of the journal entry was attached to the abstract and forwarded to Mr. Booth, agent of the plaintiff; that plaintiff then required a bond from Mr. Cook in reference to special assessments against the city lots, which he had executed as prepared by plaintiff; that the bond was returned as unsatisfactory, together with a new bond for execution by Mr. Cook and sureties; that in the mean time Cook had removed to St. Louis, had obtained the loan, and refused to do anything further about the bond; and that he don't know from his own knowledge when or how he got the money; that he don't know who took the acknowledgment to the mortgage; that he never saw it till after this suit was commenced; that he don't know of any other legal business that Mr. Cook had done for several years previous; that he don't know why he did not prepare the mortgage and take the acknowledgment; that an attempt had been previously made to partition the sixty-acre tract, in the probate court, which was not considered good by Judge Brewer, who examined the abstract; that William Cook employed him to bring the suit; that he never had any conversation with Jane Cook about the partition suit; and that he was a notary public during 1874.

On cross-examination, he says, his recollection is that Jane Cook was the plaintiff in the partition suit, and that Booth came to Wyandotte to examine the sixty-acre tract and the lots, soon after the application for the loan was made. (Record, pp. 108–110).

Jane Cook, re-called, says, she never had any conversation with Mr. Booth, in reference to mortgaging her sixty-acre farm.

"Q. Did you, at that or any other time, tell Mr. Booth that 'you were very anxious to assist your husband, Mr. Cook, out 'of his difficulties—debts that were pressing him?

'A. No, sir; I did not; for I did not know that he was so 'in debt. I did not know anything about his business.

'Q. Did you, then or at any other time, say to Mr. Booth, 'that you were willing to mortgage your property left you in 'your own name?

'A. I never talked with Mr. Booth at all about mortgage 'or anything else.

'Q. Please answer this question yes or no.

'A. I did not. I never thought of such a thing.

'Q. Did you, then or at any other time, say to him, that it 'was a very valuable piece of property?

'A. No, sir; I never did."

She says she had no conversation with him, except in reference to his wanting some water, &c., as stated in her answer to a previous question; that Mr. Cook never told her anything about his business affairs; that she did not know, at the time Booth was there, that her husband was in any financial difficulty; that she knew he was in the banking business, and owned a great deal of property; that she did not know he was wanting to borrow money; that her husband did not present the mortgage to her, until after he came back from California, in December; that she did not know that Booth, at the time he was at her house, or at any other time, had gone out and examined her sixty-acre tract of land; that she supposes Alison Crockett ought to have known the sixty-acre tract was her separate property, left her by a former husband, for he had known her for a number of years; that, in relation to her husband's habits, in reference to drinking, he took sprees every five or six months, that would last five or six weeks, so that he had to have a physician to cure him; that he would be perfectly crazy; that, when drinking, he used profane language, and, at

times, was abusive to his family, and at other times would be very mild; that she never authorized or employed Scroggs & Bartlett, attorneys, to commence and prosecute a suit in partition against her children, in the District Court of Wyandotte County, and was not consulted or advised with about the commencement or prosecution of such suit. (Record, pp. 110–112.)

On being recalled, Mrs. Cook testifies in answer to questions on behalf of complainant:

"Q. State whether you wrote your name on the bill of exchange Mr. William Cook got on the loan from the plaintiff?

'A. All I really know is that he said he had got the money and had got his life insured.

'Q. State whether you wrote your name on that bill of exchange?

'A. William Cook came up and told me to write my name on it; I wrote it, or tried to. I suppose I wrote my name on the paper you refer to, but am not positive without seeing it.

Re-direct examination:

'Q. State whether or not you could read writing?

'A. Very little: only just persons' hands that I am accustomed to." (Record, pp. 113–114.)

Izetta Barnett, says she was living at home with her mother when Booth was at her mother's house; that she was at home when Mr. Cook and Booth came in; that they ate their dinner, and then Mr. Cook took him to lie down on her mother's bed; that that is all she remembers at that time, for she went to school; that Mr. Cook did not introduce him to her mother or herself; that she returned from school at recess, that she asked her mother several times who he was and she said she did not know; that after Mr. Cook came back from the depot, her mother asked him again who he was, and he told her, and then she asked her mother again and she told her (witness).

"Q. State where you were on the 19th day of December, '1874, at the time the mortgage sued on in this action was 'signed; also who was in and about the house, and what took 'place that you saw or heard?

'A. I was at home; I was there and mother was there; 'and we were alone till Mr. Cook came up with Mr. Crockett and 'Mr. Gibson: Mr. Cook came in and asked me where mother 'was, and I told him that she was in the dining room. He 'went in just as she was going from there into the hall. He 'said something to her, what it was I did not hear, but I heard 'her say that she could not and she would not. Mr. Gibson 'and Mr. Crockett staid outside, and were not in the house at this time."

She says she didn't know, when Mr. Cook came up, whether he had the mortgage with him or not; that she did not know then what her mother meant when she said she could not and would not, but does know now; that she supposes she meant she would not sign that mortgage.

On cross-examination, she says, that at the time she went to school and left Booth at the house, she left the house at about a quarter after one, and came home again at about three o'clock.

On re-direct examination she says she was at home the rest of the afternoon with her mother, after coming home at recess, and that no conversation took place between her mother and Booth during that time. (Record, pp. 112—113.)

Alfred Welsh, testifies that he was acquainted with Alison Crockett in his life time.

"Q. State, whether or not, you ever had any conversation 'with said Alison Crockett in relation to the signing and 'acknowledgment of the mortgage by William Cook and his 'wife, Jane Cook, to the plaintiff, and the mortgage sued on in 'this action; if so, state where and what that conversation was?

'A. I had, in his office; we were talking about Cook's

'affairs, and about this mortgage. He said, "If I could have 'seen Mrs. Cook, I would have had a talk with her about the 'contents of this mortgage, but I did not. I am sorry now, I 'didn't, for the woman has been deceived all the way through." 'He said he did not explain the contents to her, because she had 'signed it before he saw her, and would have told her her land 'was in that mortgage. I did not tell this to Jane Cook before 'Mr. Cook's death, nor till after the answer was filed in this suit."

On cross-examination he says he is a son-in-law of Jane Cook. (Record, p. 114.)

The testimony of Mrs. Cook, relating to communications and transactions between herself and husband, as well as that of the witness Welsh, in reference to his conversation with Alison Crockett, was taken subject to proper objections.

The original mortgage, bill of exchange and deposition of Mrs. Cook, are here with the record, having been sent up by direction of the court below for the inspection of Mrs. Cook's signatures by this court. (Record, p. 118.)

ASSIGNMENT OF ERRORS.

First. The Circuit Court erred in holding and deciding that, upon the proofs, the defense of Mrs. Cook was established.

Second. The Circuit Court erred in holding and deciding that the evidence offered in support of Mrs. Cook's answer, was sufficient to overcome the force and effect of the mortgage and the certificate of the acknowledgment thereof.

Third. The Circuit Court erred in holding and deciding that Mrs. Cook was not estopped, as to the matters set up in her answer, by her subsequent conduct and acts.

Fourth. The Circuit Court erred in holding and deciding that as between the insurance company and Mrs. Cook, the former should bear the loss rather than the latter.

Fifth. The Circuit Court erred in holding and deciding that the mortgage was not a lien on the sixty-acre tract, and in excluding the same from the decree of foreclosure and sale.

Appellant respectfully insists that the decree should have been for the foreclosure of the mortgage, and for the sale of all the property embraced in it, in accordance with the prayer of the bill.

I.

The proofs, regard being had to the weight of evidence merely, fail to establish the defense.

The answer, though sworn to, is not evidence in the case, as the oath was waived by the bill.

The only *direct* evidence in support of the answer consists *solely* of Mrs. Cook's deposition, offered in her own behalf.

In respect to the averment of the answer that Alison Crockett, the acknowledging officer, was the agent of the company, in loaning the money and in taking the mortgage and acknowledgment, no proof whatever is offered to sustain it.

The claim of Mrs. Cook, as shown by her deposition, briefly stated, seems to be this: Her husband requested her to sign a mortgage; she asked him what the mortgage was; he answered that it was on certain property, specifying it, which in fact belonged to him; she said she did not wish to sign it, and could not sign it; thereupon he threatened that, if she did not do so, he would "go to drinking till he killed himself," and from that he said he was going to compel her to sign it; when she refused, he took her and set her in a chair and held her there, took a pen and put it in her hand, held her hand, and guiding it, wrote her name, as it appears on the mortgage; the officer did not read or explain the contents of the mortgage to her, but, on her inquiring in reference to the property embraced in it, told her it did not concern her property; she did not

know the sixty-acre tract was in the mortgage and would not have signed it if she had known the fact.

If an inspection of Mrs. Cook's signatures to her deposition, endorsement of the draft and mortgage, confirms the testimony of the experts, in reference to the character of her signature to the mortgage, then her testimony as to the means or process by which her name became attached to the mortgage cannot be true. If Mr. Cook held her hand in his and *wholly* directed it, in writing her name, the characteristics of the writing would be those of his own signature, not hers; and if he but *partially* directed her hand, the combination of the two forces would have produced an irregular and ragged signature. In case any irregularities were straightened out, or touched up with a pen, after the name was written, an examination with a glass would detect the fact. (Record, pages 100—101, 103—104, 99.)

The testimony of Mr. Booth, as to his conversation with Mrs. Cook, in reference to her mortgaging the sixty-acre tract, unless her subsequent denial of its truth is to prevail against it, establishes the fact that she knew it was originally proposed that this land should be included in the mortgage; and it would naturally follow, in the absence of any explanation as to its being omitted, that she knew it was so included at the time the mortgage was executed and acknowledged. (Record, p. 102, 110–111.)

The fact that the real estate left by Mrs. Cook's former husband, and which had been partitioned in the Probate Court, was again partitioned by suit in which she was plaintiff, and her children, part of whom lived with her at the time, were defendants, to perfect the title to the sixty-acre tract for the purposes of this loan, is hardly reconcilable with her professed ignorance that this property was to be mortgaged to secure the loan. She says the suit was commenced without her knowledge or authority, but admits she knew of its pendency. Would she not have made inquiry, and have obtained some

explanation or reason, true or false, for the bringing of the suit? And if any explanation or reason, *other than the true one*, had been given her, would she not have disclosed it on her examination? (Record, p. 108–110, 98.)

It is immaterial whether the statement of Mrs. Cook, in her deposition, that the acknowledging officer did not read the deed, or explain its contents to her, is true or not. It was not necessary, under the laws of Kansas, that he should have done so. The statutes of that state place a married woman, in respect to her conveyances of real estate, upon the same footing as a married man. Section 2, chap. 62, p. 563, Gen'l Stat. of 1868, is as follows: "A married woman, while the marriage relation 'subsists, may bargain, sell and convey her real and personal 'property, and enter into any contract, with reference to the 'same, in the same manner, to the same extent, and with like 'effect as a married man may in relation to his real and per-'sonal property."

The certificate of acknowledgment required by the statute is the same, whether the person, whose acknowledgment is taken, is a man or woman, married or unmarried.

Section 11, chap. 22, p. 186, Gen'l Stat., is as follows: "The 'court, or officer, taking the acknowledgment must endorse up-'on the deed a certificate, showing, in substance, the title of the 'court or officer before whom the acknowledgment is taken; 'that the person making the acknowledgment was personally 'known to the court, or to the officer taking the acknowledg-'ment, to be the same person who executed the instrument, and 'that such person duly acknowledged the execution of the 'same."

The statement of Mrs. Cook, as to the conduct of Alison Crockett, in the matter of the acknowledgment, is not only a serious attack upon the integrity of a public officer, but, if true, would have subjected him to indictment and to the payment of a fine equal, in amount, to the value of Mrs. Cook's separate property included in the mortgage. Section 16, chap. 22, p.

187, Gen'l Stat. 1868, is as follows: "Any officer who knowingly states a material untruth, in either of the certificates herein contemplated, may be indicted and fined, in any sum not exceeding the value of the property conveyed or otherwise affected by the instrument on which such certificate is endorsed."

In view of this statute, is it more probable that the officer, who had nothing to gain by it, should have perpetrated this gross fraud upon Mrs. Cook, and, with the witnesses of the transaction living, should, by a false certificate have rendered himself liable to the penalty of the statute; or, that Mrs. Cook, who had everything to gain, should, after the death of the witnesses who could confront her, have tried the experiment of saving her property, at the expense of appellant, by making a false charge against the officer?

It seems improbable that so gross an act of fraud and violence, as that testified to by Mrs. Cook, should have been perpetrated on her by her husband, while the persons who were to attest the proper execution of the mortgage were in waiting at the door of the house, for that purpose; and her story is rendered more improbable by the fact that, upon the mortgage being signed, these persons were immediately called in, and were allowed to attach their signatures to the mortgage, without being informed by her of what had taken place, and without a protest on her part. (Record, pp. 94, 100.)

The evidence offered on behalf of Mrs. Cook for the purpose of corroborating her own testimony, is of but trifling significance.

While the deposition of E. L. Bartlett shows that he commenced the partition suit at the request of Mr. Cook, and that he never had any conversation with Mrs. Cook about it, yet it does not follow, but that she had given full authority, through her husband, for the bringing of the suit. The attorney was, no doubt, satisfied, at the time, that he had authority to act in her name. He knew the suit was brought to perfect Mrs. Cook's title, in view of including the property in this mortgage, and prosecuted it for that purpose; and as Mrs. Cook knew of

the pendency of the suit, and made no inquiry of the attorney who was conducting it in her name, concerning it, one would naturally infer that she knew the object of the suit, and had authorized its prosecution for the purpose intended. (Record, pp. 108—110.)

The statement of Izetta Barnett, that, after Mr. Cook came to the house on the day the mortgage was signed, she heard her mother say, in answer to something he had said to her mother, which she did not understand, "she could not and she would not," hardly corroborates Mrs. Cook's testimony, because it is materially different from the answer which Mrs. Cook says she gave him; her language is: "I told him I did not wish to sign the 'mortgage and could not sign it; it was something I never 'believed in." Again, Mrs. Cook says her daughter "knew 'nothing of what was going on." (Record, pp. 113, 93 and 97).

The testimony of Alfred Welsh, in reference to a conversation which he says he had with Alison Crockett, in his lifetime, is clearly incompetent, both because it was mere hearsay, and because it was an attempt to impeach the official certificate of acknowledgment by declarations of the officer. Alison Crockett, if he had been living, would not have been a competent witness to falsify his own certificate.

Allen v. Lenoir, 53 Miss. 321.
Stone v. Montgomery, 35 Miss., 83.

The statement of John Gibson, made on cross-examination, that Mrs. Cook "seemed to be in trouble; she looked as if she 'had been crying," may be claimed as a corroboration of her testimony. Assuming her statements to be true, that she knew nothing of her husband's financial troubles, until then, and that he threatened if she did not sign the mortgage, to "go to 'drinking till he killed himself," there would have been natural

causes for a wife's trouble; or, if she had said that she refused to sign the mortgage because her property was in it, the circumstance referred to would furnish stronger corroboration of such statement, than it would of the alleged fact that she had been compelled to join her husband in the execution of a mortgage which included no property but his own. (Record, p. 93.)

II.

Under the rules of evidence applicable to cases of this character, the proofs were wholly insufficient to sustain the defense.

1. Where it is sought to establish, by parol evidence, a claim or defense, as against the terms of a written instrument, such as fraud or mistake, a resulting trust against an absolute deed, or that a deed absolute on its face was given as a mortgage, the proofs in support of such claim or defense must be so clear and convincing as to leave in the mind no reasonable doubt on the subject. The rule, as laid down by this court in *Howland v. Blake*, 97 *U. S.* 624, is applicable here. It is stated, as follows: "In each case the burden rests 'upon the moving party of overcoming the strong presumption 'arising from the terms of a written instrument. If the proofs 'are doubtful and unsatisfactory, if there is a failure to cver-'come this presumption by testimony entirely plain and con-'vincing beyond reasonable controversy, the writing will be 'held to express correctly the intention of the parties. A judg-'ment of the court, a deliberate deed or writing, are of too 'much solemnity to be brushed away by loose and inconclusive 'evidence. Story Eq. Jur. sec. 152; *Kent v. Lasley*, 24 *Wis.* '654; *Harrison v. Juneau Bank*, 17 *id.* 340; *Harter v. Christoph* '32 *id.* 246; *McClellan v. Sanford*, 26 *id.* 595. * * * It is 'not necessary to say that the complainant's claim is not made 'out, or that such claim is overthrown by the evidence of the 'defendants."

2. In conveyances of land, duly acknowledged, the officer's certificate of acknowledgment can be impeached only for fraud, and in such case, the testimony of the grantor is insufficient to overcome the force of the certificate. In *Russell v. Baptist Theological Union*, 73 *Ill.* 337, it was claimed, on the part of the wife, that she had never signed or acknowledged the mortgage. The court says, "It is a rule, that the acknowledgment of a deed cannot be impeached for anything but fraud, and in such cases the evidence must be clear and convincing beyond a reasonable doubt; and whilst the making of a false certificate would be a fraud on the party against whom it is perpetrated, there is in favor of the officer, the fact that he is under his official oath when he grants the certificate, and the liability to indictment, conviction and infamy is certainly as strong incentive to truthful and honest action, as is the restraint imposed on an interested witness, struggling for the gain following success in a suit, and escaping loss by defeat. Hence, the mere evidence of the party, purporting to have made the acknowledgment, cannot overcome the officer's certificate, nor will it be with slight corroboration."

3. It is incompetent to impeach a deed, or the certificate of acknowledgment, even for fraud, without proof that the grantee participated in, or knew of the fraud, or had knowledge of facts which would put a prudent man upon inquiry. This doctrine extends to conveyances by married women, whether of their separate property, or in bar of dower; and it applies as well to mortgages given for the benefit of the husband, as to those where the wife receives the consideration.

2 Jones on Mortgages, Sec. 1,492.
1 Hilliard on Mortgages, (4th Ed.) 623.
Aikin v. Morris, 2 Barb. Ch. R. 140.
Louden v. Blythe, 27 Pa. St. 22.
Baldwin v. Snowden, 11 Ohio St. 203.
McHenry v. Day, 13 Iowa, 445.
Green v. Scranage, 19 Iowa, 461.
James v. Fisk, 9 Smedes and Marsh., 144.

The proofs in this case wholly fail to connect the mortgagee with the alleged fraud, either by participation in, or knowledge concerning, it. The company took the mortgage in entire good faith, advancing its money upon the security of it, without having cause for suspicion even that the wife's signature had been procured by any improper conduct, or influence, on the part of her husband. This being so, the validity of the mortgage, as to the separate property of the wife included in it, cannot be assailed.

4. The testimony of Mrs. Cook, in respect to the means, or process, by which she says her signature to the mortgage was obtained, was clearly incompetent and inadmissible under Sec. 323, Chap. 80, p. 692, Gen'l Stat. Kan., 1868. This section, so far as it is applicable, is as follows: "The following persons 'shall be incompetent to testify * * * *Third*, husband 'and wife, for or against each other, except concerning transac- 'tions in which one acted as the agent of the other, or when 'they are joint parties and have a joint interest in the action; but 'in no case shall either be permitted to testify concerning any 'communication made by one to the other during the marriage, 'whether called while that relation subsisted, or afterwards."

The prohibition of the statute extends not merely to the words which passed between Mrs. Cook and her husband, but also to the acts accompanying the words—the words and the acts being inseparable and constituting an entire transaction.

The Supreme Court of Kansas, in *Anderson v. Anderson*, 9 *Kan.* 112, holds that testimony of the same character as that objected to here, is inadmissible under the statute.

5. The testimony of Mrs. Cook, in respect to the acknowledgment of the mortgage, so far, at least, as it tends to impeach the integrity of the officer's certificate, is practically immaterial, for the reason that a conveyance of lands in Kansas is good, between the parties, without acknowledgment.

Knaggs vs. Mastin, 9 Kan. 532, p. 549.

III.

Upon the facts of the case, conceding, for the purposes of argument only, the competency and sufficiency of the testimony, the validity of the mortgage, as between Mrs. Cook and the insurance company, cannot be questioned.

1. The conduct and acts of Mrs. Cook, after the mortgage was signed, estop her from asserting any invalidity in its execution.

She permitted the officer to attach his certificate of her voluntary acknowledgment. She assented to the delivery of the mortgage, knowing the insurance company was expected to advance its money upon the security of her signature; and several days afterwards, having had ample time for consideration of the matter, she voluntarily endorsed the draft, payable to the joint order of herself and her husband, with full knowledge that it had been sent by the company in payment of the loan, without an intimation, even, from her, that the mortgage had not been given with her free consent and entire approval. She will not now be heard to assert a state of facts contrary to those she had previously represented to be true, and on the faith of which the company parted with its money. This principle, in the language of the court, in Morgan v. Railroad Co., 96 U. S. 720, "proceeds upon the ground that he who has been 'silent as to his alleged rights, when he ought, in good faith, to 'have spoken, shall not be heard to speak when he ought to 'be silent. *The Bank of the United States v. Lee*, 13 *Pet.* '107. He is not permitted to deny a state of things which, by 'his culpable silence or misrepresentations, he had led another 'to believe existed, and who has acted, accordingly, upon that be-'lief." In *Gregg v. Von Phul*, 1 Wall. at page 281, this court says: "The doctrine of estoppel *in pais*, or by the act of the 'party, is founded in natural justice, 'and is a principle of good 'morals as well as law.' 'The primary ground of the doctrine 'is, that it would be a fraud in a party, to assert what his pre-

'vious conduct had denied, when, on the faith of that denial, 'others have acted.' No one is permitted to keep silent when 'he should speak, and thereby mislead another, to his injury."

The coverture of Mrs. Cook cannot shield her against the estoppel. Under the statutes of Kansas, a married woman is wholly free from the control of her husband, in all matters pertaining to her separate property, and by the decisions of the Supreme Court of that state, based upon the statutes referred to, a married woman is estopped by the same acts or conduct which would work an estoppel upon any other person.

Knaggs v. Mastin, 9, Kan. 532.

Mrs. Cook says she did not know her property was included in the mortgage, and it may be said she cannot be estopped as to matters of which she was ignorant. But ignorance of the contents of one's deed will not be received in answer to an estoppel.

In the case of *Roach v. Karr*, 18 *Kan.* 529, it was claimed by the wife that she was ignorant of the contents of the mortgage; the court says, at page 534, "The mortgage was complete, 'except the signature of Mrs. Roach, when presented to her by 'her husband to be signed, and she at no time asked for it 'to be read to her. If she was in any manner mistaken, or 'defrauded as to the contents of the mortgage, such result 'was the consequence of her own gross negligence. She should 'have demanded that the instrument be read to her. If she 'relied on the representations of her husband, it was at her 'peril alone. The sound policy of the law forbids that a person thus situated, as Mrs. Roach was, and signing a mortgage 'under such circumstances as herein presented, should thereafter, as against the mortgagee, innocent of any irregularity 'in the execution of the instrument, assert that she never consented to the execution thereof."

In *Upton v. Tribilcock*, 91, *U. S.*, 45, this court says, at page 50: "It will not do for a man to enter into a contract, and, 'when called upon to respond to its obligations, to say that he 'did not read it when he signed it, or did not know what it 'contained. If this were permitted, contracts would not be worth 'the paper on which they are written. But such is not the law. 'A contractor must stand by the words of his contract; and, if 'he will not read what he signs, he alone is responsible for his 'omission."

2. Even if there was not sufficient fault in the conduct and acts of Mrs. Cook to conclude her, upon the principle of an estoppel *in pais*; yet, as between her and the insurance company, which was wholly free from fault, she should bear the loss. This is upon the principle, akin to that of estoppel, that, "When a question arises between two innocent parties, 'which of them shall suffer by the misconduct of another, the 'loss must fall upon him who has enabled the wrong to be 'committed, and not on him who had no means of knowing 'that it was a wrong."

Calais Steamboat Co. v. Van Pelt's Adm'r., 2 Black. 372.

D. G. HOOKER.
Counsel for Appellant.

IN THE SUPREME COURT

OF THE

UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, IN AND FOR THE DISTRICT OF THE STATE OF KANSAS.

THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, OF MILWAUKEE, *Appellee*,

vs.

GEORGE P. NELSON, AS ADMINISTRATOR OF THE ESTATE OF WILLIAM COOK, JANE COOK, et al., *Appellant*.

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STATEMENT OF THE CASE.

The plaintiff brings this suit, to foreclose a mortgage as mortgagee. The defendant, Jane Cook, files her answer alleging that a certain tract of land, containing sixty acres, and described in the mortgage, is her separate property; that her signature was obtained by duress of her husband, and by fraud. The answer is sworn to, and alleges, among other things, showing fraud and duress, and that the officer (Allison Crockett) who took the acknowledgment was the agent of the plaintiff; that said officer told defendant that the mortgage only covered certain lots on Minnesota avenue, in Wyandotte city, and that it was nothing that would ever

buildings (which were put on the lots by this money) to her and her children.

We don't ask the court, in considering the evidence in the case, to admit as competent testimony, such portions of her statement as relate to communications between husband and wife, however much the exclusion of such may work a hardship on this woman to allow the rules to permit a husband to shield himself against his own wrong.

There can be no question but the acts of the husband, the manner in which he procured her name to the mortgage, outside of conversations, are sufficient to grant the relief asked for. In this respect she is corroborated by other testimony clearly admissible.

John Gibson, the attesting witness to the mortgage, and a witness produced by the plaintiff says, the defendant Jane Cook, "looked as though she had been crying;" she looked "much troubled;" that the mortgage was not read or explained to her while he was in the room.

May not, also, the testimony of Izetta Barnett be also a strong support of her mother, Jane Cook's, statements, when she says she heard them talking? Heard her mother say, "I can't and I won't." If this was a fair, honest transaction, why were Gibson and Crockett left standing out in the yard, and not permitted to come in the house until this signing business was gone through with? The whole affair bears the mark of fraud upon this woman.

The plaintiffs knew they were dealing with the separate property of the wife, and they should have taken the precaution to know she was not being deceived.

The good faith of the plaintiff cuts no figure in the case; if her consent was not obtained to mortgage her own property, she cannot be divested of it.

Anderson vs. Anderson, 9th Kas., 116.
Ladd vs. Brenner, 17th Kas., 210.

Plaintiff must prove that the contents of the mortgage were read or explained to Jane Cook.

1st Bland Ch., 370.
20th Howe, 509.
4th Iredel, 394.

A wife may mortgage her separate property for the benefit of her husband, without any consideration passing to her. Yet every such transaction should be scrutinized with an anxious watchfulness and caution and dread of undue influence.

Wiley vs. *Prince*, 21st Texas, 637.
2nd Roper, Husband and Wife, 216–224.
Pybus vs. *Smith*, 1st Ves. Jr., 189.
Bradish vs. *Gibbs*, 3rd Johns. Ch., 549.

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Wm. J. Ingalls.